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ILLEGAL IMMIGRATION ENFORCEMENT AND SOCIAL SECURITY PROTECTION ACT OF 2005

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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ILLEGAL IMMIGRATION ENFORCEMENT AND SOCIAL SECURITY PROTECTION ACT OF 2005

THURSDAY, MAY 12, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:18 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Hostettler (Chairman of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Good afternoon. Today's hearing examines H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005." Under this legislation introduced by Congressman David Dreier, the Federal Government would issue secure Social Security cards that employers would use to verify the identity and work eligibility of newly hired employees. The legislation is based upon the understanding that we will only be able to assert control over illegal immigration when we can turn off the "job magnet" that draws most illegal aliens to our country. As almost half of all illegal aliens resident in the U.S. came to the U.S. legally on temporary visas, border controls alone will never be sufficient.

Congress recognized the power of the job magnet in 1986 when we passed the Immigration Reform and Control Act of 1986. This legislation made it unlawful for employers to knowingly hire or employ aliens not eligible to work, and required employers to check the identity and work eligibility documents of all new employees. If the documents provided by an employee reasonably appear on their face to be genuine, the employer has met its document review obligation.

Unfortunately, the easy availability of counterfeit documents has made a mockery of IRCA. Fake documents are produced by the millions and can be obtained cheaply. Thus, the IRCA system both benefits unscrupulous employers who do not mind hiring illegal aliens but want to show that they have met legal requirements, and harms employers who don't want to hire illegal aliens but have no choice but to accept documents they know have a good likelihood of being counterfeit.

In response to the deficiencies of IRCA, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 instituted three employment eligibility confirmation pilot programs for volunteer employers. Under the "basic pilot program," the proffered Social Security numbers and alien identification numbers of new hires are

checked against Social Security Administration and Immigration and Naturalization Service records in order to weed out fraudulent numbers, and thus to ensure that new hires are genuinely eligible to work.

IIRIRA required the INS to submit a report on the basic pilot program after the end of the third and fourth years the program was in effect. The report found that, "an overwhelming majority of employers participating found the basic pilot program to be an effective and reliable tool for employment verification." Ninety-six percent of employers found it to be an effective tool for employment verification, and 94 percent of employers believed it to be more reliable than the IRCA-required document check. In 2003, Congress extended operation of the pilot programs for an additional 5 years, and required that it be made available to employers nationwide no later than December 1, 2004.

Under H.R. 98, DHS builds on the structure of the basic pilot program by constructing a mandatory employment eligibility verification program for employers nationwide. The bill would establish a database including data on the citizenship status of individuals and the work and residency eligibility information of work-authorized aliens. The database could be based on the information and procedures used by the basic pilot program. The Social Security Administration would issue Social Security cards with encrypted machine-readable strips, security features designed to prevent tampering, counterfeiting, or duplication, and a digitized photograph. Once the program is operational, no person may begin employment unless he has obtained such a secure card and displayed it to his employer.

No employer may employ an individual unless the employer verifies that the employee has such a card and that the individual is authorized to work in the U.S. Verification procedures shall include those of a phone verification system, which has been used in the basic pilot program, or a card reader verification system capable of reading the machine-readable strip in the card. Through these procedures, the employer will have access to the database established by DHS.

I look forward to today's testimony examining the employment eligibility verification process proposed by Mr. Dreier.

At this time, the Chair recognizes the gentleman from Texas, Mr. Smith, for purposes of an opening statement.

Mr. SMITH. Thank you, Mr. Chairman. I am going to be brief for two reasons. One, I know you have to leave in a few minutes, and the only non-full flight to Texas leaves in about an hour. So I am going to try to rush things along.

But I just have to say it is a credit to you, Mr. Chairman, that you have been able to persuade the front line of immigration reform advocates to be here today. I have never seen such a starring lineup, I think, in all my years of being on the Immigration Subcommittee.

I know we are here in particular to have a hearing on H.R. 98, Representative Dreier's bill, which I have co-sponsored. And I just want to thank David Dreier for his efforts on immigration reform. He is always a thoughtful Member when it comes to immigration. He always has good ideas, and this is one of them.

It is absolutely essential, in my judgment, that we have a tamper-proof Social Security card. We have needed one for years, and if we are serious about enforcing immigration laws, if we are serious about protecting our borders, and if we are serious about homeland security, we need to pass legislation like this.

In the case of the tamper-proof Social Security cards, Mr. Chairman, you have already pointed out all the ways that they are going to help employers and help legal workers in the United States. I would only say that as important as the bill is and as essential as it is that we implement it, it really rests largely on the willingness of the Administration to enforce it. We have a situation today where, for example, in 1994 the Administration did not fine a single employer for violating employer sanctions. And when we are not willing to do that, we are really not willing to reduce the attraction, the huge magnet remains that understandably attracts and draws so many people into the United States.

And David Dreier's bill is one of the many tools we need, but this is certainly one of the most important. And I just want to thank him for introducing it, and appreciate the attendance again of everybody who is a member of this panel. And I will yield back.

Mr. HOSTETTLER. The Chair recognizes the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers for purposes of an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman. And I am glad to see our distinguished colleagues here and our own witness, Mr. Rotenberg.

Gentlemen, the one overriding civil liberties question is, how much REAL ID do we find necessary here? We just passed the REAL ID Act this week in which we are going to—if this becomes the law of the land, will require every State to now follow Federal determinations as to what should be on a driver's license card, creating for the first time, whether we like it or not, the potential for a national database with all kinds of information. The Social Security number is just the beginning of where this may go, because there is no Federal limitation on it.

Now comes another idea that tops that, which suggests to us that we need a better Social Security protection; we need to revise the Social Security card. And it seems to me that—I don't know how many other security measures on identification cards we may end up talking about, but it seems to me that Social Security wasn't intended to be a national identification card; and that what we may be doing here may not outweigh the harm that we may be doing in determining the effectiveness or the objective that we seek under the Homeland Security Department, which now includes much of the immigration considerations.

So I ask unanimous consent to revise and extend my statement, and I await the testimony of my colleagues.

Mr. HOSTETTLER. Without objection.

And the Chair recognizes the gentleman from California, Mr. Lungren, for an opening statement.

Mr. LUNGREN. Thank you very much, Mr. Chairman. And I note in the Chairman's opening remarks, you referred to IRCA, the Immigration Reform and Control Act of 1986. As the one who was the Republican floor manager for that bill and one of the authors of

employer sanctions, I must say that at that point in time we thought that we were responding to the tremendous attraction, or magnet, of employment in this country as a source of much of the illegal immigration we saw at that time. Little did we know that subsequent Administrations, both Democrat and Republican, would not enforce employer sanctions. And now, as we look back, we need more than the will to enforce employer sanctions, we need tools that will allow us to do that.

In 1986 and also in 1984, I brought to the floor proposals to present tamper-proof or counterfeit-proof Social Security cards. At that time, the criticism was raised by many that what we were attempting to do was to create a national identification card. In responding to that, we pointed out that this would not be used for purposes of being on one's person at all times for which one would have to present it upon the command of any officer of the government, State or Federal, but rather would be used at the time of employment. In fact, we even gave a grace period, I believe it was 18 hours or 36 hours, so that you could start your job so long as you brought the card on the second day. And our purpose was, in fact, to have a card that had some credibility, that actually would identify the individual to their right to work in this country. And, frankly, without that, Mr. Chairman and others, I would suggest we would never have an effective employer sanction program.

So the other problem we had was our lack of a capacity to share information or to have a database that was, in fact, accurate and which could be accessed on a timely basis. And one of the complaints we heard from employers was that we were putting them at risk as we were requiring them to make an identification, so to speak, of individuals who were seeking employment and at the same time, we were saying that they would be subject to lawsuits based on discrimination if they inquired further.

And now, we have the technical capacity to create those databases and the access to those databases in a timely fashion. And so the gentleman from California, Chairman Dreier's bill is an attempt to take these two extremely important tools, and marry them with what has already existed in law for a serious period of time, that is employer sanctions, and make employer sanctions work.

And I think, frankly, if we do not have these tools or do not utilize these tools, it is difficult for those of us in Congress to criticize Administrations for failing to enforce the law. I think these are essential tools that will assist.

The gentleman from Michigan's concerns about privacy are to be seriously considered. His concerns about us creating a national ID card ought to be considered. But that burden is on the Members of Congress to ensure that it doesn't become a national ID card, but rather is utilized for the purposes we articulate here. And if we need to write in protections to ensure that happens, I would hope that we would do so, but it ought not dissuade us from doing that which needs to be done to make employer sanctions actually work.

I have looked in vain for another tool, that is a tool other than employer sanctions that would get at the magnet that we have. I happen to be one who believes that we need a guest worker program, but we can only have a guest worker program if we have

these kinds of laws in force and in effect, and it would be folly for us to do otherwise.

So I commend the Chairman of the Rules Committee for bringing this forward. I commend the Chairman of this Subcommittee for having these hearings. And I hope we can look at it straightforwardly with concern about civil liberties, but at the same time recognizing what is necessary to make the law work, which I believe more and more American people are insisting that we do.

Thank you very much, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman.

At this time, the Chair will introduce members of our esteemed panel.

Congressman David Dreier has represented the 26th District of California since his election to Congress in 1980. In January 1999, Chairman Dreier joined the leadership of the House when he was named Chairman of the House Rules Committee. Congressman Dreier chairs the California Republican Congressional Delegation and headed California Governor Schwarzenegger's transition team. Congressman Dreier is a long-time advocate of border security, and he is Chair of the U.S.-Mexico Congressional Caucus. Chairman Dreier graduated cum laude from Claremont McKenna College and also holds a master's degree in American government from Claremont Graduate University.

Congressman Silvestre Reyes was elected to Congress in 1996 to serve the 16th District of Texas. He represents the city of El Paso, which, when combined with the Mexican city of Juarez, constitutes the largest border community in the United States. Congressman Reyes joined the U.S. Immigration and Naturalization Service after serving in the Army. During his INS career, he held several major posts including assistant regional commissioner and Chief of U.S. Border Patrol for two Texas sectors. He is credited with initiating innovative border security initiatives such as "Operation Hold the Line" in the El Paso sector, and the Border Patrol's Canine Program. Now, as a Member of Congress, he serves on the House Armed Services Committee and Permanent Select Committee on Intelligence. Congressman Reyes holds an associate's degree in criminal justice from El Paso Community College.

T.J. Bonner is president of the National Border Patrol Council, an organization representing about 10,000 U.S. Border Patrol employees. Mr. Bonner joined the Border Patrol in 1978 and was promoted to senior Border Patrol agent in 1987. As a 27-year veteran of the Border Patrol, Mr. Bonner has the experience to discuss with first-hand knowledge major issues affecting immigration and border security policy today. Mr. Bonner has testified before Congress and this Committee, Subcommittee several times. And I am beginning to memorize, sir, your resume. And he is also a frequent contributor to radio, television, and other media outlets regarding these issues.

Marc Rotenberg is Executive Director of the Electronic Privacy Information Center in Washington, D.C. Mr. Rotenberg also teaches information privacy law at Georgetown University Law Center and has been editor for several books on privacy law. He has served on national and international advisory panels, and has re-

ceived several major awards for his work, including the 2002 World Technology Award in Law. Mr. Rotenberg is a graduate of Harvard College and Stanford Law School.

Gentlemen, you will have each 5 minutes to give an opening statement. Without objection, your written statement is made a part of the record, and we look forward to your testimony.

Chairman Dreier, you may proceed.

TESTIMONY OF THE HONORABLE DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DREIER. Thank you very much, Mr. Chairman. As I listened to your very thoughtful opening remarks, the kind words, and knowing the history of our friend Mr. Smith, the very thoughtful statement with which I concur raised by the distinguished Ranking Minority Member of the full Committee, our friend from Michigan, Mr. Conyers, and then my California colleague, Dan Lungren, who referred to his now quarter-century record in dealing with this issue, I almost feel as if I don't need to testify because, frankly, in your opening statement you went through an outline of what it is that we have done.

But let me express my appreciation to you, to your very able counsel George Fishman, to the Chairman of the full Committee who is a co-sponsor of the legislation along with Mr. Smith, and I think Mr. King is a co-sponsor of it. I have yet to get Mr. Conyers on board, but I will tell you that—and I know Mr. Lungren is a co-sponsor. I will tell you that last night I had the chance to go to a great dinner downtown that was honoring former First Lady Nancy Reagan, and at that dinner the opening speeches were made by Nancy Pelosi, Harry Reid, Bill Frist, and Denny Hastert underscoring a very important notion of bipartisanship and how we need to continue to pursue that.

As I left dinner and went home, I had National Public Radio on and heard a program with both Alan Simpson and Robert Reich in which they talked about their bipartisan history together. And Alan Simpson referred to the fact that his goal has always been, throughout his career, in looking at public policy questions, to try to be able to figure out a way in which we can get things done. And we know that immigration reform, border security issues have been among the most divisive that we have faced in this institution and across this country, as we know very well. And I know that today in both the Senate and the House, bipartisan legislation is being introduced on dealing with the issue of a guest worker program.

But I will tell you that I believe that the legislation that we have introduced and that most of the people in this room who are Members of Congress have co-sponsored is enjoying broad bipartisanship because it is focused on the issue of border security. And while we have had division in the area of dealing with this focus on the supply of people who have been coming in illegally, focusing on increasing the size of the Border Patrol, or focusing on all of these issues that relate to toughening up at the borders, we really have not expended a great deal of effort on the demand side, which, to me, is so key, and that is why this comes into play.

Now, my good friend Mr. Conyers just used the term "revise the Social Security card." Well, this is actually a Social Security card. It belongs to Jo Maney, who is my press secretary sitting behind me here. She gave it to me yesterday, and I am going to give it back to her in just a moment and don't plan to keep it. But this is a document which, as we all know, can easily be duplicated. And if you just look at the media over the past several weeks, we found that $1,300 is what it costs to get one of these fraudulently made. One woman in Chicago had her Social Security card used on 37 different instances by people who were here illegally. And then, of course, we recently saw the case where someone used a Social Security card, and what did they do? They went to work for a nuclear power plant in Florida.

And so it is not revising this Social Security card, it is simply bringing it into the 21st century.

Now, I was privileged to be here when Dan Lungren was working in 1984 and 1986 on this effort, and in 1996 I joined with the gentleman from Florida, our former colleague Mr. McCollum, in trying to bring about a counterfeit-proof Social Security card. But the fact is the Social Security card that we are proposing is a very simple one which is a 21st century Social Security card. It says across here—and I would say to my friend Mr. Conyers, emblazoned on this card, it says, "This is not a national ID card."

Now, I know some would argue, if it looks and walks and talks like a duck, it is a duck. The fact of the matter is this is not going to be used for identification purposes; this will only be used by people looking for a new job. And, as long as everyone in this room is reelected, you won't need to have a counterfeit-proof Social Security card because you won't be looking for a new job. If you are a senior citizen and retired, you won't need to have a counterfeit-proof Social Security card. Of course, you will still have a Social Security number, which is used for a lot of different purposes, but you won't need a counterfeit-proof Social Security card. And all the information that will be provided on this is information that the Federal Government has today; no new information whatsoever.

Now, I have read the testimony of Mr. Rotenberg, and I share the concerns that he raises and the concerns that Mr. Conyers raises. I consider myself to be a libertarian-leaning Republican. I don't want more Government, and I don't want the Government to have any more information than is necessary. No new information would actually be provided by the Government or required here.

I have been joined, Mr. Chairman, by a couple of great patriots in this effort. And when I underscore the bipartisanship, you have outlined this great career of Silvestre Reyes' 26½ years as one of the top leaders in the Border Patrol. He is leading this side on behalf of the Democrats, and we are working closely together on it.

And, T.J. Bonner is really the progenitor for my most recent incarnation on this issue, which, as I said, I have supported for a long period of time. He talked about the fact that in 19—in last fall's September 20th issue of Time Magazine that we would not be able to get support in the Congress for this kind of notion because people in the Congress wouldn't want to stand up to the employers and the business community. Well, the fact of the matter is I was outraged when I heard of companies that were recruiting people il-

legally in Mexico to come to work in the United States, and I said we have to do something. So I have been very privileged, and I have named this the Bonner Plan because T.J. has been such a great proponent and a great help to me in this effort.

So I think we have got a great chance to have success here. I do believe that this has to, as Mr. Lungren said, be part of a comprehensive program which will include some kind of temporary guest worker program because of the economic demand that exists here. But this is H.R. 98, because T.J. is convinced it can reduce by 98 percent the number of illegal border crossings, because people who come here simply want to feed their families. Without the magnet of jobs because of the Social Security card, they won't be able to get them, they will be inclined to go home. And also, with a worker program, we can bring them out of the shadows and create a chance for them to come forward and either go home or become part of this society. That is in our national security interest, and after what we went through yesterday, and in this post-September 11, 2001 world, I think that focusing on security and at the same time dealing with this problem that we have in the immigration area, this is the right thing to do.

And, again, I thank you very much for inviting me to be here today, and I thank all of you for indulging me. And have a nice trip back to Texas, Lamar.

Mr. HOSTETTLER. Thank you, Chairman Dreier.

[The prepared statement of Mr. Dreier follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

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Testimony of Hon. David Dreier
Before the Subcommittee on Immigration, Border Security and Claims
Committee on the Judiciary
May 12, 2005

Mr. Chairman, thank you very much for inviting me to testify today as the Subcommittee considers H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005. I also want to thank the ranking member, the gentlewoman from Texas, Ms. Jackson-Lee, and the Chairman of the full committee, the gentleman from Wisconsin, Mr. Sensenbrenner, for allowing us this opportunity.

Mr. Chairman, I am particularly pleased to have the support of two great Americans in this endeavor. The gentleman from Texas, Mr. Reyes, is my lead co-sponsor and brings a unique perspective to this issue due to his experience as chief of the Border Patrol in McAllen and El Paso, Texas. I am grateful for his foresight, determination, and willingness to work in a bipartisan way to address the challenge of illegal immigration.

I have also had the privilege to work closely with another great American, T.J. Bonner, the President of the National Border Patrol Council. It was T.J.'s comment in the September 20, 2004 issue of *Time* magazine that was the genesis of this legislation, and I appreciate very much the opportunity to work with him on what I call the Bonner Plan.

In addition to the gentleman from Texas and Mr. Bonner, I am here today on behalf of our diverse group of over thirty co-sponsors, including the distinguished Majority Whip, the Chairman of the Judiciary Committee, and the former Attorney General of the State of California. I appreciate their support.

Mr. Chairman, while as I mentioned, it was T.J.'s quote which led me to first introduce this particular legislation last fall, I have long been concerned by the Social Security card's vulnerability to counterfeiting. As some of the veteran Members here may recall, we had a lengthy debate on improving the security of Social Security cards during the debate on the Illegal Immigration Reform and Immigrant Responsibility Act on March 20, 1996. I voted that day to make Social Security cards as secure against counterfeiting as the 100 dollar reserve note and the U.S. passport. Unfortunately, I was among a minority of my party in favor of the amendment offered by our former colleague from Florida, Mr. McCollum, and we ended up losing that vote.

But the world has changed significantly since 1996. As we all tragically learned on September 11th, 2001, we are no longer impervious to attacks on our homeland. As the 9/11 Commission noted, our border security system must be evaluated to ensure that it cannot be taken advantage of by terrorists and criminals. As T.J. and Silvestre can attest, our Border Patrol is hopelessly overmatched because of the thousands of illegal immigrants flooding across our border every day in search of economic opportunity. We cannot expect the Border Patrol to have a reasonable chance of identifying and apprehending those who really do mean us harm when the numbers are so clearly not in our favor.

To date, most of our efforts to stop illegal immigration have targeted the supply side of the equation. We try to keep people from crossing the border by building fences, deploying unmanned aerial vehicles, and having the Border Patrol make arrests. With roughly 11 million people in the country illegally and more coming across our borders every day, it is clear that the current approach is not working. While enacting the REAL ID Act is a strong step forward, we know that more must be done.

What T.J., Silvestre, and I propose is that the United States government target demand instead. The only way to begin to control the illegal immigration influx is to create conditions by which those immigrants will not desire to enter the country illegally in the first place. I think even the most cynical among us would agree that the vast majority of illegal immigrants come here because they are hoping to feed their families. Despite laws to the contrary, work is plentiful for illegal immigrants and current safeguards are insufficient to prevent their employment.

One of the largest vulnerabilities in our current immigration system is the ease with which illegal immigrants can obtain fraudulent identity documents which they then use to demonstrate to employers that they are here legally. We just passed the REAL ID Act to reduce fraudulent driver's licenses, and now we must turn our attention to the most ubiquitous federal document, the Social Security card.

There have been several recent news reports on Social Security card use by illegal immigrants and the evidence is not encouraging. One broadcast detailed how an illegal immigrant can purchase a fake Social Security card for $1,300 and then easily get a job using the fake card as proof of their eligibility to work. Another report detailed the struggle against identity fraud that one Chicago-area resident faced because no fewer than

37 different illegal immigrants were using her Social Security number for employment purposes. Perhaps most disturbingly, illegal immigrants using false Social Security numbers were apparently able to get work at a nuclear power plant in Florida. Far from being just an immigration issue, Social Security card fraud is a national security issue.

H.R. 98 addresses this vulnerability, simplifies current law for employers, toughens sanctions against those who choose to break the law, and provides the Border Patrol the resources it needs for interior enforcement. Our legislation requires the Social Security Administration to issue Social Security cards which contain a digitized photo of the cardholder, in addition to other fraud countermeasures developed in conjunction with the Department of Homeland Security. While the bill does not explicitly call for biometric identifiers, there is nothing in the legislation to preclude their consideration by Homeland Security. The bill also requires the placement of an encrypted electronic signature strip on the back of the improved card. This strip would be utilized by employers to verify, via a DHS database, an individual's eligibility to work in the United States either by swiping the card through an electronic card-reader or calling a toll-free telephone number. The employer would instantaneously receive a response back that would tell them whether or not they are permitted to hire the individual in question.

Only people who intend to seek a new job would have to be issued the new Social Security card. Retirees, for example, would not have to obtain the new, improved Social Security card. I want to make clear that our proposal takes us no further down the road of establishing a national identification card. The improved Social Security card would only be required when an individual applies for a new job. H.R. 98 further stipulates that the Social Security card shall not become a national identification card, requires that the

improved Social Security card contain the words "not to be used for the purpose of identification," and provides that an individual shall not be required to carry the card on their person.

In addition, I want to underscore that under H.R. 98 the government would collect no more information about an individual that it does today. The Social Security Administration currently already collects information on citizenship and employment eligibility and shares that information with the Department of Homeland Security under the aegis of the Basic Pilot Program. What we propose does not threaten anybody's privacy or impinge upon anybody's civil liberties.

As one of the strongest supporters of reducing the level of federal bureaucratic red tape for small businesses and private enterprise, I am pleased to say that our legislation reduces the burden on business. Since the passage of the Immigration Reform and Control Act of 1986, employers have been required to verify that an individual is permitted to work in the United States before they make a hire. The current I-9 Employment Eligibility Verification form requires employers to accept 94 different document combinations. Everything from school ID cards to U.S. Coast Guard Merchant Mariner cards must be accepted by employers to establish a prospective employee's identity and eligibility to work.

Compounding matters, employers are potentially liable under the law if they hire an individual who has presented a fraudulent form of identification – any one of the aforementioned 94 combinations. While there are no doubt employers out there who knowingly hire illegal immigrants, I believe that a majority wants to comply with the law and tries to, but we are forcing them to be experts in detecting dozens of different types

of fake documents. Each of our offices is required to comply with the law and file an I-9 verification form for each employee we hire. I ask my colleagues, do you have anyone in your office you feel confident can identify a fake military dependent's ID card, Native American tribal document, or any of the other permitted documents? If not, then you could be potentially criminally liable if your office hires an illegal immigrant.

Compare the current system to what H.R. 98 would put into place. Rather than 94 different document combinations, there would only be one that employers would be allowed to accept. Employers would not be responsible for detecting fake cards because they would have access to the card-readers and the toll-free number to verify that the card belongs to the cardholder and that the individual is eligible to work in the U.S. Our legislation will make it simpler, faster, and more reliable for employers to know exactly who it is they are hiring.

No matter how simple we make the process there will always be those who are unwilling to comply with the law because they enjoy the benefits of a cheap source of illegal labor. While these employers know it is unlawful to hire an illegal immigrant, current penalties deter little and enforcement of the law is too lax. To provide extra incentive for employers to comply, we have increased civil penalties by 400 percent, from $10,000 to $50,000 per illegal immigrant hired. We also increase criminal penalties to a maximum of 5 years in federal prison for each illegal immigrant hired. And because it is inherently unfair for the government to pick up the tab for deporting an illegal immigrant to his home country when someone was unlawfully employing them, H.R. 98 requires the employer to reimburse the federal government and cooperating State and local governments for the cost of deportation.

But penalties are only effective insofar as violations of the law are investigated and prosecuted. This has been the most tragic failure of the 1986 legislation. The government outlawed the employment of illegal immigrants and required employers to verify eligibility, yet it has done very little to enforce the law or ensure compliance. We need dedicated Border Patrol agents to focus exclusively on employer enforcement, and the Bonner Plan authorizes 10,000 new agents to do just that. That is the number that T.J. has determined would be necessary to enact an effective enforcement regime, and while I know it is a large number I think we must realize that we cannot have effective border security on the cheap.

Mr. Chairman, full implementation of the Bonner Plan will decrease illegal immigration. In fact, T.J. estimates that it can eliminate 98 percent of illegal border crossings, thus H.R. 98. Why? Because illegal immigrants will not come here if they know they will be unable to find a job. There simply will be no incentive for them to make the perilous journey across the desert. If we can decrease illegal immigration by even half that much it will be a strong start and allow the Border Patrol to focus its efforts on apprehending criminals and interdicting terrorists.

Past approaches to solving this problem have clearly not worked as well as we would have liked. It is time for a new solution. We must enforce the laws already on the books, we must make it feasible for employers to comply with those laws, and we must increase the penalties for violating those laws. In short, we must enact the Bonner Plan.

Mr. HOSTETTLER. At this time the Chair will call on the gentleman from Iowa, Mr. King, to assume the Chair, as I myself will have to leave. I want to thank the panel for being here today, but because of a family medical situation, I will have to leave at this time.

Mr. KING. [Presiding.] I thank the distinguished Subcommittee Chairman, Mr. Hostettler, for yielding the Chair to me today and regret the mission that he is on with his family.

And I would at this point then recognize the Honorable Mr. Reyes for his testimony.

TESTIMONY OF THE HONORABLE SILVESTRE REYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. REYES. Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to come before you to testify on behalf of H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005." I also want to commend my good friend and colleague, Chairman Dreier, for his leadership on this issue.

I can tell you from personal experience, when our colleague, Mr. Lungren, talks about the passage of the Immigration Reform and Control Act of 1986, I was Chief of the Border Patrol down in McAllen in South Texas, and at that time when that law was passed, it had, as you know, several components. One was an amnesty legalization component; another one very importantly was an employer sanctions component. The one worked very well, although we never processed the millions of undocumented people that were projected. I know at the time there were projections of between 11 and 16 million undocumented people in this country that would be eligible for residency under—or amnesty under IRCA 1986. We wound up processing about 3½ million and an additional half a million that were subsequently processed because of errors by INS.

The one remarkable thing that I want to share with you as part of my experience of being the Chief back then is that, when this law passed, and it received a significant amount of publicity including the employer sanction provisions, some parts of the border area reduced attempted entries into this country by as much as 80 percent. The reason for that was that the perception in Mexico and Latin America was that there was no need to try to enter this country illegally because, once you got here, you were going to have to produce documentation to get a job. And, if you didn't have that documentation, you were not going to be able to be employed.

That is important, because while we saw that from industry, reduction in illegal entry attempts, we never got the resources by Congress. Congress failed to fund positions to be able to enforce employer sanctions in the interior of this country. So within a 2- or 3-year period, it was not hard to figure out that if undocumented entries or entrants could get through the border area and into the interior of the country, there were no investigators or Border Patrol agents to enforce employer sanctions. So we saw the patterns gradually escalate again to the same levels of pre-1986.

I mention that because employer sanctions—my experience has been employer sanctions has worked very effectively where we have had resources to enforce it, and primarily that is along the U.S.-

Mexico border. It has not worked in the interior of the United States simply because no one has been there to enforce it.

So this law is not going to do us any good if we pass a counterfeit document and then we fail to provide the resources to Homeland Security, some 10,000 positions that are included in the bill, to be able to provide the kind of enforcement that was supposed to be done with employer sanctions as well.

Today, ironically enough, the McCain, Kennedy, Kolbe Flake, and Gutierrez bill was introduced on the Senate and the House side. That is a comprehensive immigration reform proposal that I think will work. It has got a security provision, and it has got a guest worker provision, and it also has a legalization component. So it has got all the ingredients to, I think—to be able to be successful and address a proactive plan to stem the flow of undocumented entries into this country.

But, again, it will not succeed, much like this act won't succeed, much like the Immigration Reform and Control Act in 1986 did not succeed, if we don't fund the positions and we don't give the agencies the resources to be able to enforce that law. All the laws in the world won't make a difference if we don't fund the enforcement capability. So it is important.

September 11 made a significant difference in the way we look at border enforcement, the way we look at those that are in this country in the shadows. And we need to find a vehicle that will identify people, that will legalize them, that will provide them work visas to be able to work in this country, but, most importantly, to give the United States Border Patrol under Homeland Security the ability to ferret out those that would do this country damage like was done on September 11. So it is important, it is critical, it is vital.

I have the same concerns that my colleague from Michigan has, and that I want to associate myself with the comments of my colleague, David Dreier, and tell you that this is not something that we take lightly. But this is not an effort to create a national ID card. In fact, it—as my colleague said, it states so on the card itself here that this is not a national ID card. But it is a way that we can solidly identify the person that has it and the person that is applying for a job at the time that he or she presents this card.

I think it is the right proposal at the right time for the right reasons, and keeping in mind that we all are as concerned about privacy and not creating a database that would somehow identify Americans in the future for a reason that it was not intended. So I am proud to be a co-sponsor of this legislation, and I think it is important that this Committee consider it.

I want to thank you again for the opportunity, and I also want to apologize because I am on Congressman Lamar Smith's airplane, so I am going to have to leave to make that as well. So thank you very much for giving me this opportunity.

Mr. KING. I thank the gentleman for his testimony today, and recognize the urgency of getting to the airport and not missing Congressman Smith's airplane.

[The prepared statement of Mr. Reyes follows:]

PREPARED STATEMENT OF THE HONORABLE SILVESTRE REYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Good afternoon. I would like to thank Chairman Hostettler and Ranking Member Jackson Lee for giving me the opportunity to testify before the Subcommittee today about H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005. I have been pleased to work on with my friend and colleague from California, Mr. Dreier, on the bill and I appreciate his leadership on this issue.

I believe I come to this hearing with a somewhat unique perspective on immigration and border security. My district of El Paso, Texas—long with its sister city, Ciudad Juárez, Mexico—omprise the largest metropolitan area on the United States-Mexico border. Also, prior to coming to Congress, I was in the United States Border Patrol for 26½ yrs. I served as Chief, first in the McAllen sector and subsequently in the El Paso sector from 1984 until my retirement in 1995.

As the only Member of Congress with a background in immigration and experience defending our nation's borders, I have firsthand knowledge of what we need to do to reduce illegal immigration and help keep America safe. I believe that H.R. 98 can be a critical part of that effort, because I have witnessed the difference that tough employer sanctions can make in discouraging attempted illegal entries into the United States.

In 1986, Congress passed the Immigration Reform and Control Act, which included new sanctions against employers who hire illegal immigrants. After that law was enacted, in parts of the country such as the border region where those of us in law enforcement had the resources to enforce those sanctions, we saw a significant decrease in the number of people trying to enter the country unlawfully. Clearly, once word got out that employers would not hire illegal immigrants, the incentive to enter the United States was gone and attempted entries dropped off considerably.

H.R. 98 would substantially expand and improve on the 1986 provisions by enhancing the security of Social Security cards and allowing employers to instantaneously verify a prospective employee's eligibility to work in the United States. The bill would also increase civil and criminal penalties for employers who hire illegal immigrants or fail to verify their employment eligibility. Finally, H.R. 98 would authorize 10,000 new Department of Homeland Security personnel to enforce employer compliance.

If appropriately funded, H.R. 98 would be an important step toward halting the flow of people seeking to enter the United States illegally in order to find employment. By doing so, our immigration and border security personnel will be able to focus more of their time, effort, and resources on those who may be trying to enter the country to do us harm.

If we are really serious about curbing illegal immigration and keeping America safe, we will move this legislation forward. I hope to continue to work with Mr. Dreier and the Subcommittee to do so. Thank you.

Mr. KING. And the Chair will recognize the gentleman Mr. Bonner for his testimony for 5 minutes.

TESTIMONY OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL

Mr. BONNER. Thank you very much, Congressman Reyes. Thank you very much for your support of this very important plan, Congressman Dreier.

The sponsor of this bill called me last September in my office—at first I thought it was a practical joke—"Hi, this is David Dreier, I would like to talk to you about your comments in Time Magazine." And I said, "Well, that voice does sound familiar; I think I have heard that on C-SPAN, I probably better return that call." And we struck up a conversation. I went up to his office, and we exchanged ideas, and I was surprised, and he probably was surprised also, at how similar our views were on this issue. And I worked with his office to craft language which I believe will largely solve the illegal immigration problem.

There is no question that our borders are out of control right now. Every year millions of people are crossing our borders. Last

year the United States Border Patrol apprehended 1.2 million of those people. But the front-line agents estimate that two to three times that many slipped by us.

This is simply unacceptable in a post-9/11 world, because we know that of the people who are crossing, not all of them mean us no harm. In fact, when we married the two fingerprint systems of the Border Patrol and the FBI together last September, in the first 3 months alone, about 8 percent of all the people that we apprehended turned out to be criminal aliens. And we don't know how many terrorists have slipped by, because it stands to reason that if there were 8 percent that we caught, at least 8 percent of the ones that got by us were also criminals. And it is not unreasonable to assume that there are terrorists in that mix as well.

We need to do something about this problem. Ask any Border Patrol agents out there, and they will tell you that their number one priority, the person—the people that they really want to catch are the criminals and the terrorists, because those are the ones who are going to harm our country, harm their families, harm your families. But as long as they are overwhelmed with millions of people coming across, they simply can't do that.

This piece of plastic here, a counterfeit-proof Social Security card, which would double as an employment verification document, would do more to secure our borders than millions of metric tons of concrete poured to form walls around the border, or millions of Border Patrol agents linked arm in arm, because no matter how many barriers or how many agents you put out there, the economic draw of jobs in this country is simply too great. People in Mexico, for example, are making $4 a day on average; people in China make less than $1 a day. There is a huge incentive for people to come to our country and seek employment, and, as long as they can find it, they will continue to come across.

The only way to turn off the employment magnet is to come up with a system that makes it simple for an employer to figure out who has a right to work in this country, and it also makes it easy for the enforcement agents to go in and fine that person if they choose to disobey the law.

H.R. 98 does both of those things, and therefore the National Border Patrol Council strongly supports it. For the interest of our national security, we urge the Congress of the United States to pass this bill. This is the single most important piece of legislation that can be passed to secure our borders.

In this era of terrorist threats, we need to secure our borders. Nobody disagrees with that. So I urge this Subcommittee and the entire Congress to do the right thing and pass this bill. Thank you.

Mr. KING. I thank the gentleman for his testimony.

[The prepared statement of Mr. Bonner follows:]

PREPARED STATEMENT OF THE T.J. BONNER

STATEMENT OF THE

NATIONAL BORDER PATROL COUNCIL

OF THE

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFL-CIO

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CLAIMS

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

H.R. 98, THE "ILLEGAL IMMIGRATION ENFORCEMENT
AND SOCIAL SECURITY PROTECTION ACT OF 2005"

PRESENTED BY

T.J. BONNER
NATIONAL PRESIDENT

MAY 12, 2005

The National Border Patrol Council, representing 10,000 front-line Border Patrol employees, thanks the Subcommittee for holding a hearing concerning H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005." Those of us who are tasked with enforcing our Nation's immigration laws believe that this legislative proposal contains the key to securing our borders. Therefore, the National Border Patrol Council unequivocally supports this landmark legislation.

The tragic events of September 11, 2001 painfully underscored our Nation's vulnerability. Nowhere is this vulnerability more evident than at our borders. Every year, millions of people successfully cross our Nation's borders illegally. While the overwhelming majority of these people do not pose a security threat, the few that do can infiltrate our borders just as easily as everyone else. This situation is untenable, and must be addressed immediately.

Even if Congress were to exponentially increase the size of the Border Patrol tomorrow, our borders would remain out of control. The attraction of jobs in the United States that pay ten to fifty times more than can be earned in a person's native land is a much more powerful force than the deterrence factor of a few thousand Border Patrol agents who can do nothing more than send people back across the border to try again until they succeed. The only way to solve this problem is to address the root cause of illegal immigration. Ninety-eight percent of those who cross our borders illegally do so in search of employment opportunities in the United States. As long as illegal aliens are able to find jobs, they will continue to cross our borders. As long as the Border Patrol is overwhelmed by millions of illegal aliens crossing our borders annually in search of work, it will be unable to focus its enforcement efforts on stopping terrorists and criminals from entering our country.

The Immigration Reform and Control Act of 1986 recognized this problem and attempted to solve it by prohibiting the employment of illegal aliens. Although the concept was sound, the program was unsuccessful for two main reasons. First, it allowed workers to establish their eligibility to work in this country by presenting one or two out of a variety of documents, all of which could easily be counterfeited. Second, it placed the burden of determining the authenticity of such documents on the employer. Given this flawed structure, it is no wonder that the program failed.

In its interim report in 1994, the U.S. Commission on Immigration Reform made the following findings and recommendations about worksite enforcement:

> The Commission believes that reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration. The ineffectiveness of employer sanctions, prevalence of fraudulent documents, and continued high numbers of unauthorized workers, combined with confusion for employers and reported discrimination against employees, have challenged the credibility of current worksite enforcement efforts.
>
> A better system for verifying work authorization is central to the effective enforcement of employer sanctions.
>
> *The Commission recommends development and implementation of a simpler, more fraud-resistant system for verifying work authorization.* The current system is doubly flawed: it is too susceptible to fraud, particularly through the counterfeiting of documents; and it can lead to increased discrimination against foreign-looking or foreign-sounding authorized workers.
>
> In examining the options for improving verification, the Commission believes that the most promising option for secure, nondiscriminatory verification is a computerized registry using data provided by the Social Security Administration [SSA] and the INS.
>
> The key to this process is the social security number. For decades, all workers have been required to provide employers with their social security number. The computer registry would add only one step to this existing requirement: an employer check that the social security number is valid and has been issued to someone authorized to work in the United States.
>
> The Commission believes the computerized system is the most promising option because it holds great potential for accomplishing the following:
>
> • Reduction in the potential for fraud. Using a computerized registry, rather than only an identification card, guards against counterfeiting of documents. It provides more reliable information about work authorization.
>
> • Reduction in the potential for discrimination based on national origin and citizenship status, as well as inappropriate demands for specific or additional documents, given that employers will not be required to ascertain whether a worker is a citizen or an immigrant and will have no reason to reject documents they believe to be counterfeit. The only relevant question will be: "What is your social security number?"

> • Reduction in the time, resources, and paperwork spent by employers in complying with the Immigration Reform and Control Act of 1986 [IRCA] and corresponding redirection of enforcement activities from paperwork violations to knowing hire of unauthorized workers.[1]

The Commission reiterated these findings and recommendations in its final report in 1997. Although there was no discussion about making the cards themselves counterfeit-proof, it must be remembered that these reports were issued several years before the September 11, 2001 terrorist attacks, and also that identity theft was not nearly as prevalent then as it is now. Moreover, the magnitude of the Social Security fraud problem was not fully understood at that time either. On September 19, 2002, the Inspector General of the Social Security Administration stated the following at a joint hearing before the Subcommittee on Social Security and this Subcommittee:

> In calendar year 2000 alone, SSA issued approximately 1.2 million SSNs to non-citizens, out of some 5.5 million SSNs issued in all. A recently conducted Office of Inspector General (OIG) study indicates that 8 percent (about 96,000) of those 1.2 million SSNs were based on invalid immigration documents, which SSA processes did not detect. We have no way of determining how many SSNs have been improperly assigned to non-citizens.[2]

It is clear that a counterfeit-proof document is necessary in order to address these rapidly proliferating problems and ensure the integrity of an employment verification system that utilizes the Social Security number.

An effective employment verification system must contain the following elements:

- It must ensure that only those who are entitled to have a Social Security card receive one. It would be absolutely worthless to devise technology that foils counterfeiters if ineligible people could nonetheless obtain the document.

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[1] Interim Report of the U.S. Commission on Immigration Reform entitled *U.S. Immigration Policy: Restoring Credibility* (09-30-94), pages xii-xiii of the Executive Summary.

[2] Statement of James G. Huse, Jr., Inspector General of the Social Security Administration, *Homeland Security and the Integrity of the Social Security Number*, September 19, 2002.

- It must also enable employers to quickly and easily verify an applicant's eligibility to work in this country.
- Finally, the penalties for non-compliance must be sufficiently severe to encourage compliance, and the law must be easily enforceable.

The Illegal Immigration Enforcement and Social Security Protection Act of 2005 meets all of these goals, and does so in a non-intrusive manner. The counterfeit-proof Social Security card is not a national identification card and would only have to be presented when applying for a new job.

It is clear that the current one-dimensional enforcement strategy — attempting to set up a blockade along 6,000 miles of border to prevent millions of impoverished people from crossing in search of work, but ignoring almost everyone who escapes that porous dragnet — is extremely ineffective. Until the root cause of illegal immigration is addressed, it will continue unabated. Once the employment magnet is turned off, however, people will soon realize that it is futile to circumvent our immigration laws in hopes of improving their economic lot in life. This would have the added benefit of ending the suffering and death caused by the callous criminal organizations that smuggle human beings.

Although the primary reason for the current mass migration to the United States is economic, its consequences are no longer so limited. Porous borders allow almost anybody or anything to cross, including terrorists, criminals, and weapons of mass destruction. This cannot be tolerated any longer. Enacting H.R. 98 will enable the Border Patrol to focus its limited resources on preventing terrorists, criminals and weapons of mass destruction from entering the United States. The passage of this legislation will do more to secure our borders than any other conceivable measure. If the employment magnet is not deactivated, however, all other measures will ultimately prove useless in securing our borders. The National Border Patrol Council therefore strongly urges the Congress of the United States to act swiftly to pass this legislation for the sake of our Nation's security.

Mr. KING. And the Chair would recognize Mr. Rotenberg for 5 minutes.

TESTIMONY OF MARC ROTENBERG, EXECUTIVE DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER

Mr. ROTENBERG. Thank you very much, Congressman King, Congressman Lungren, other members of the panel. I would like to thank you again for the opportunity to participate in this hearing today. My name is Marc Rotenberg. I am Executive Director of the Electronic Privacy Information Center. We are a nonpartisan research organization, and we examine emerging privacy and civil liberties issues. And I need to explain to the panel this morning that one of the issues that we have spent most of our time on this year has been the growing public concern about identity theft.

As you know, there have been many hearings held in the House and the Senate as well exploring how the misuse of personal information in the United States is contributing to fraud and theft and other types of crime. It has become clear that one of the key factors that contributes to this problem is the widespread use and misuse of the Social Security number. And so a proposal that would expand the use of the Social Security number for the purpose of determining employment eligibility, we believe, raises significant privacy concerns.

Now, I would like to explain in response to points that were made both by Congressman Lungren and Congressman Smith that I think there are steps that could be taken to reduce the likelihood that the Social Security card would be fraudulently used to obtain employment in the United States, and we would support that very much.

To the extent that you add techniques such as holograms to make it tamper-proof, possibly to include the photo of the correct cardholder, you will reduce the likelihood that that card will be misused by others. And I think this would be an appropriate step also because it would reduce the likelihood of identity theft. But there is a particular provision in the bill that we think does raise privacy concerns, and that is the inclusion of the magnetic stripe which includes the data on the card that then makes the card machine-readable to employers and presumably to others.

And so the first question becomes in this effort to enhance the Social Security card—is what will happen when private merchants and others begin to try to use this card for check-cashing, for building entry, or for other purposes? There is currently no Federal law that would prohibit the use of that card for this purpose, and we think this is a very serious issue that should be considered if the bill were to go forward.

A second issue concerns the role of the Department of Homeland Security in administering the new employment eligibility database. We do quite a lot of work with the Department of Homeland Security on privacy issues, and one of the problems that has arisen with DHS is that oftentimes they seek exemptions from the Federal Privacy Act for the management of the data systems that they establish under their authority. So, for example, records systems that might otherwise be administered by the Social Security Administration are subject to Federal law that prevents the misuse of the

information on American citizens that that Federal agency obtains. But when DHS obtains information, including a Social Security number, they may very well seek certain exemptions that will provide less privacy protection than when the information is maintained by the Social Security Administration.

In fact, we see this already in one of the provisions of the bill that would give the Secretary of the Department of Homeland Security the authority to designate other permissible uses of this information apart from determining employment eligibility. In effect, by bringing the Department of Homeland Security into the role of determining employment eligibility in the United States, it has also created the opportunity to use Social Security records for purposes that were never intended.

We think a lot could be done to strengthen the privacy safeguards if the bill were to go forward. We would like to see restrictions, for example, on the improper use of this information, and we would also like to see stronger technical and security measures established to prevent any misuse of the information that is obtained or the databases that have been established.

As you know, the REAL ID Act went recently through the Senate without even a hearing. For the 2 months prior to passage of the act, it was interesting to see that several of the State department of motor vehicles offices had become the targets of identity thieves. These were the agencies that, under the REAL ID Act, will actually be required to obtain the birth certificates of all Americans when they seek to renew their driver's licenses. The security in those State agencies simply wasn't adequate to protect this sensitive personal information. It is our view that there is not adequate security in the collection of this sensitive personal information to ensure privacy protection.

When the bill—if the bill goes forward, it is not simply illegal immigrants that will face the question of whether to obtain this card, it is all Americans who are seeking to work who will be required to carry a card that contains a magnetic stripe with their Social Security number and other personal information encoded. These are significant concerns. I hope the Committee will be able to address them.

Thank you again for the opportunity to testify.

Mr. KING. I thank the gentleman for his testimony.

[The prepared statement of Mr. Rotenberg follows:]

PREPARED STATEMENT OF MARC ROTENBERG

INTRODUCTION

Chairman Hostettler, Ranking Member Jackson Lee, and Members of the Subcommittee, thank you for the opportunity to testify on H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005." My name is Marc Rotenberg and I am Executive Director of the Electronic Privacy Information Center. EPIC is a non-partisan research organization based in Washington, D.C. Founded in 1994, EPIC has participated in cases involving the privacy of the Social Security Number (SSN) before federal courts and has frequently testified in Congress about the need to establish privacy safeguards for the Social Security Number.[1]

[1] See, e.g., *Greidinger v. Davis,* 988 F.2d 1344 (4th Cir. 1993) ("Since the passage of the Privacy Act, an individual's concern over his SSN's confidentiality and misuse has become significantly more compelling"); *Beacon Journal v. Akron,* 70 Ohio St. 3d 605 (Ohio 1994) ("the high potential for fraud and victimization caused by the unchecked release of city employee SSNs

EPIC maintains an archive of information about the SSN online at http://www.epic.org/privacy/ssn/.

Today, I will provide an analysis of H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005," from a privacy and civil liberty rights perspective. The bill would significantly increase the use of the Social Security Number. Further, the bill would transfer SSN record information from the Social Security Administration to the Department of Homeland Security, and would dramatically expand the mission of DHS to include determining who is eligible to work in the U.S. Finally, the bill does not include adequate privacy and security safeguards.

I. H.R. 98 WOULD TURN THE SSN INTO A NATIONAL IDENTIFIER AND INCREASE THE RISK OF IDENTITY THEFT

The United States Congress has a long-standing concern about the misuse of the Social Security Number. In passing the Privacy Act of 1974, Congress specifically limited the use of the SSN and rejected the establishment of a federal data center for personal information. A 1977 report issued as a result of the Privacy Act highlighted the dangers and transfers of power from individuals to the government that occur with centralization of personal information:

> In a larger context, Americans must also be concerned about the long-term effect record-keeping practices can have not only on relationships between individuals and organizations, but also on the balance of power between government and the rest of society. Accumulations of information about individuals tend to enhance authority by making it easier for authority to reach individuals directly. Thus, growth in society's record-keeping capability poses the risk that existing power balances will be upset.[2]

Creation of a nationwide system of SSN verification across public agencies and private businesses will upset balances of power described in the 1977 report and reduce individuals' autonomy from both government and commercial entities. The creation of a national ID runs counter to public sentiment and recent congressional action.[3]

This concern is not new; it was voiced at the creation of the SSN and has since been raised repeatedly. The SSN was created in 1936 for the sole purpose of accurately recording individual worker's contributions to the social security fund. The public and legislators were immediately suspicious and distrustful of this tracking system fearing that the SSN would quickly become a system containing vast amounts of personal information, such as race, religion and family history that could be used by the government to track down and control the action of citizens. Public concern over the potential for abuse inherent in the SSN tracking system was so high, that in an effort to dispel public concern the first regulation issued by the Social Security Board declared that the SSN was for the exclusive use of the Social Security system.

The use of the SSN as the means of tracking every employment encounter will expand the amount of information accessible to the unscrupulous individual who has obtained another's SSN. The development of a machine-readable SSN will facilitate linkage between various systems of governmental and private sector records further eroding individual privacy and heightening surveillance of each American's life.

Supporters of H.R. 98 have tried to address public concerns about the creation of a national identification card by including a disclaimer in the bill stating: "This card

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outweighs the minimal information about governmental processes gained through the release of the SSNs"); Testimony of Marc Rotenberg, Executive Director, Electronic Privacy Information Center, at a Joint Hearing on Social Security Numbers and Identity Theft, Joint Hearing Before the House Financial Services Subcommittee on Oversight and Investigations and the House Ways and Means Subcommittee on Social Security (Nov. 8, 2001) *available at http://www.epic.org/privacy/ssn/testimony—11—08—2001.html*; Testimony of Chris Jay Hoofnagle, Legislative Counsel, EPIC, at a Joint Hearing on Preserving the Integrity of Social Security Numbers and Preventing Their Misuse by Terrorists and Identity Thieves Before the House Ways and Means Subcommittee on Social Security and the House Judiciary Subcommittee on Immigration, Border Security, and Claims (Sept. 19, 2002) *available at http://www.epic.org/privacy/ssn/ssntestimony9.19.02.html.*

[2] Privacy Prot. Study Comm'n, Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission (1977), *available at http://www.epic.org/privacy/ppsc1977report/c1.htm.*

[3] For instance, the Department of Homeland Security is expressly prohibited from developing National ID systems. 6 USCS § 554 (2004).

shall not be used for the purpose of identification."[4] However, the bill would create a national ID card in practice.

The bill, should it become law, would require each citizen and non-citizen in the U.S. to provide this new national identify card to each prospective employer. It also requires Homeland Security to create a database containing information on employment eligibility, as well as information on all citizens and non-citizens living in the country legally. Section 9, the Integration of Fingerprinting Databases, directs the Secretary of Homeland Security and the Attorney General of the United States to integrate fingerprint databases maintained by the both agencies. The two databases were created for specific purposes. But essential privacy safeguards have been removed. In 2003 the Justice Department's decision to lift the Privacy Act requirement that the FBI ensure the accuracy and completeness of the over 39 million criminal records it maintains in its National Crime Information Center (NCIC) database. This action continues to pose significant risks to both privacy and effective law enforcement.

The bill proposes that this new identification card would be swiped through an electronic card reader or the employer would contact the Department of Homeland Security to verify that the number is present in their database in an attempt to verify the job applicant's identity. Employers, facing stiff penalties for hiring ineligible workers, likely would use the SSN card as a de facto identification card, no matter what disclaimer was placed onto the card.

H.R. 98 also expands use of the new SSN card in another way. Under the "Confidentiality" provision of the bill, it restricts the use of the proposed DHS employment eligibility database to those required for the administration of H.R. 98 or for "any other purpose the Secretary of Homeland Security deems to be in the national security interests of the United States."[5] This "any other purpose" clause in H.R. 98 raises the risk of mission creep. It is unknown what these other purposes may be, but they will likely not be related to employment eligibility, which is the stated reason for the establishment of the database.

The Department of Homeland Security has already shown a proclivity for using personal information for reasons other than the ones for which the information was gathered. Documents about the CAPPS II program collected by EPIC under the FOIA clearly showed that the Transportation Security Administration had considered using personal information gathered for the CAPPS II program for reasons beyond its original purposes. For example, TSA stated that CAPPS II personal data might be disclosed to federal, state, local, international or foreign agencies for their investigations of statute, rule, regulation or order violations.[6]

II. THE BILL DRAMATICALLY EXPANDS THE MISSION OF DHS TO INCLUDE EMPLOYMENT ELIGIBILITY VERIFICATION

The new Department of Homeland Security (DHS) has three primary missions: Prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage from potential attacks and natural disasters. Adding to this short list of critical responsibilities to our nation and its citizens would jeopardize the core mission and impetus for the creation of this agency. Further, the role of employment verification and use of the SSN is not compatible to the make up or focus of the agency. The SSN is not just about working in our nation, but provides the means of ensuring retirement security to our nation's elderly. Changing how the SSN is administered might have unintended consequences for our nation's premier retirement security program.

H.R. 98 would shift SSN information records, and possibly the management of the database itself, from the Social Security Administration to the Department of Homeland Security. The bill would create at least 10,000 positions in Homeland Security, which already has 180,000 employees, for management of the SSN system.[7] This is a dramatic expansion of the mission of Homeland Security into the realm of employment eligibility.

Divisions in the less than three-year-old Department of Homeland Security already are suffering serious setbacks. Just a few days ago, the New York Times reported that DHS will spend billions to alter or replace antiterrorism equipment that

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[4] Illegal Immigration Enforcement and Social Security Protection Act, H.R. 98, 109th Cong., § 3(a)(3) (2005).

[5] H.R. 98 at § 4(c)(1)(B).

[6] Department of Homeland Security TSA, *Draft Privacy Impact Statements (CAPPS II),* April 17, 2003, July 29, 2003, and July 30, 2003, obtained by EPIC through FOIA litigation, *available at http://www.epic.org/privacy/airtravel/profiling.html.*

[7] *Id.* at § 8.

it has already spent $4.5 billion on.[8] Also, the Transportation Security Administration's current aviation program to screen passengers and their luggage for threatening objects recently was found to be woefully inadequate by the Government Accountability Office. The GAO found that there has been only modest progress in how well screeners detect threat objects following a report last year that documented gaps in screener security.[9] The Department of Homeland Security has significant responsibilities. Taking management of the SSN away from the SSA, which has been administering the system since its creation 70 years ago, and placing employment eligibility verification and employer sanctions into the hands of Homeland Security seems inefficient at best.

III. H.R. 98 DOES NOT INCLUDE ADEQUATE PRIVACY AND SECURITY SAFEGUARDS

Privacy and security interests are protected best by identity documents that serve limited purposes and by reliance upon multiple and decentralized systems of identification in cases where there is a genuine need to establish identity. Centralizing authority over personal identity necessarily increases both the risk of identity theft as well as the scope of harm when identity theft occurs.

An employment eligibility database containing SSNs and other personal information would provide too attractive a target to identity thieves seeking to create false identities for criminal endeavors. The Government Accountability Office has stated in congressional testimony concerning the need to protect the integrity of the SSN that:

> [t]o the extent that personal information is aggregated in public and private sector databases, it becomes vulnerable to misuse. In addition, to the extent that public record information becomes more available in an electronic format, it becomes more vulnerable to misuse. In addition, to the extent that public record information becomes more available in an electronic format, it becomes more vulnerable to misuse.[10]

H.R. 98 does not once mention "privacy." The bill has two references to "safeguard."[11] There is vague language discussing protection of the SSN and other sensitive personal information in the employment eligibility database under the "Confidentiality" subsection.[12] The bill states that database access will be restricted to those employees whose "duties or responsibilities require access for the purposes described in paragraph (1)." Paragraph (1) restricts the use of the proposed DHS employment eligibility database to those required for the administration of H.R. 98 or for "any other purpose the Secretary of Homeland Security deems to be in the national security interests of the United States."[13] It is conceivable that many employees whose responsibilities do not remotely connect with employment eligibility verification will have access to the database.

Security is vital with any computerized system, which also includes those containing personally identifiable information such as the one proposed by H.R. 98. In any computer system, whether centralized or distributed, there are security threats. There are also threats to a decentralized computer systems, called distributed networks, which require periodic connection to a centralized system. Computer security should be approached as an end-to-end task that must include all parts of the system's hardware, software, computer disks, tapes, personnel, etc.

H.R. 98 does not afford the sensitive information in the database any specific safeguard beyond the above access restriction. The bill states that the "Secretary [of Homeland Security] shall provide such other safeguards as the Secretary determines to be necessary or appropriate to protect the confidentiality of information contained in the Database."[14] The Department of Homeland Security has a history of exempting many of its programs from the provisions of the Privacy Act of 1974. and not

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[8] Eric Lipton, *U.S. to Spend Billions More to Alter Security Systems,* New York Times, May 8, 2005.

[9] Government Accountability Office, *Transportation Security: Systematic Planning Needed to Optimize Resources, Statement of Cathleen A. Berrick, Director Homeland Security and Justice,* GAO–05–357T (Feb. 15, 2005) ("GAO Report")

[10] General Accounting Office, *Social Security Numbers: Ensuring the Integrity of the SSN, Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues,* GAO–03–941T at 12 (July 10, 2003).

[11] H.R. 98 at § 4(c).

[12] *Id.* at § 4(c)(3).

[13] *Id.* at § 4(c)(1)(B).

[14] *Id.* at § 4(c)(1)(C).

conducting required Privacy Impact Assessments.[15] In this climate of heightened awareness of identity theft, it is essential that such sensitive information have strong, specific safeguards against misuse or abuse.

At the very least, the Subcommittee should prohibit the use of this card for any purpose other than determining employment eligibility, and should impose significant civil penalties for violations.

IV. CONCLUSION AND ONGOING CONCERNS ABOUT REAL ID

Mr. Chairman, Members of the Subcommittee, this week the Senate passed the supplemental appropriations for the troops in Iraq and for tsunami relief. The bill also included the REAL ID Act. This was a controversial measure and a controversial manner to pass legislation. I will not go into all of the debate about the REAL ID Act, but it is appropriate at this hearing on the SSN to explain why it is important to fully assess the risks of new systems of identification.

In passing the REAL ID Act, the Congress mandated the collection of sensitive personal information by the state DMVs at the same time that the state DMV record systems have become the target of identity thieves. In recent months, identity thieves have attacked three state DMVs. In March, burglars rammed a vehicle through a back wall at a DMV near Las Vegas and drove off with files, including Social Security numbers, on about 9,000 people. Recently, Florida police arrested 52 people, including 3 DMV examiners, in a scheme that sold more than 2,000 fake driver's licenses. Two weeks ago, Maryland police arrested three people, including a DMV worker, in a plot to sell about 150 fake licenses.[16] Instead of investigating this growing problem, Congress passed legislation that will require us all to give state DMVs the very documents that establish our identity.

With this legislation, H.R. 98, Congress would be mandating increased dependence on the Social Security Number at a time when we know that the SSN contributes to identity theft and undermines personal privacy. What will happen, for example, when merchants routinely ask individuals to present their SSN with the magnetic stripe to verify a credit card or check purchase? What about entry to a bar, a federal office building, or an amusement park? Has any thought been given to the dramatic increase in the collection and use of the SSN that will result if this bill is passed?

It is tempting to believe that technology and new systems of identification can help solve long-running policy problems, such as determining eligibility to work in the United States. But the reality may be that new systems of identification will create new risks.

It is clear the SSN was never intended to be a national identifier, and should not be used as such. H.R. 98 has substantial weaknesses. We urge the Subcommittee to limit the use of the Social Security Number. We also urge the Subcommittee to create strong safeguards for the sensitive personal information of every American eligible to work.

Mr. KING. And the Chair will recognize himself for 5 minutes. And recognizing that Mr. Dreier is very adept here, I will pose this question, and that is that I can't recognize that there has been a single employer sanctioned for hiring illegals in the last year, and I believe that has been recognized before this Committee. And so one might assume that we have an Administration that has less than a full commitment to enforcing employer sanctions. And we have over a million unmatched Social Security numbers that go to no identifiable person within the Social Security Administration or go to multiple identities for a single Social Security number. And so, keeping in mind that you do have biometrics into this Social Security card, it is still a card that will be recognized by the employer as a piece of identification, not a lot different possibly than the

[15] Examples include the CAPPS-II, Registered Traveler, Secure Flight, and Transportation Worker Identity Credential programs. *See generally* EPIC's Air Travel Privacy page at *http://www.epic.org/privacy/airtravel/*. See, also, "Homeland Security Information Network Criticized," *The Washington Post,* May 10, 2005, at A08 ("A Department of Homeland Security network that shares classified information with intelligence and law enforcement agencies was put together too quickly to ensure it can protect the information, according to the department's acting inspector general.")

[16] See EPIC, "National ID Card and REAL ID Act" *http://epic.org/privacy/id—cards/*.

identification that is in your card versus your staff's card. If they want to hire somebody, they have confidence that there is not going to be employer sanctions, how can we then establish employer sanctions by another piece of legislation when we have it already in place now, Mr. Dreier?

Mr. DREIER. Well, thank you very much for that, Mr. Chairman. Let me first say to the very specific question that is one of the reasons, as Mr. Reyes pointed out, that we call for the hiring of an additional 10,000 enforcement agents who will be out there with the responsibility of enforcing that. Number two, we increase by 400 percent the penalty from $10,000 to $50,000 per occurrence. Number three, for the first time we actually call for a 5-year prison sentence for those who violate.

Now, as my friend, Mr. Bonner, has said to me on several occasions, think about it. All you need to have are two or three or four or maybe five high-profile cases in which this enforcement is insisted upon. And T.J. likes to say, speaking for himself, I guess, that when it comes to paying one's income taxes, it is not necessarily done out of patriotism, it is done because of the existence of the Internal Revenue Service.

Similarly, if we were to have just a few of these high-profile cases with this 10,000 increase in the number of enforcement entities and the increased penalties, I believe that we would see a dramatic diminution in the numbers of people who are engaging in illegal hiring.

Let me say also that when it comes to this issue of looking at documents, I have—this is the I-9 Employment Verification form here. And if you take the combination—there are 94 combinations of documents that at this point are provided. And I would say, Mr. Rotenberg, among them, is a U.S. Social Security card issued by the Social Security Administration. So that happens to be one of them right now that actually is included.

And so I think that we are clearly on the right path toward trying to make sure that we do increase enforcement, but at the same time have a mechanism which is not going to have, again, as I said in my opening remarks, information made available that is not otherwise there.

Talk about—I would say to Mr. Rotenberg, you talk about this whole notion of information in a database becoming available to anyone else. Now, that is not what I believe would happen here. All the response would be to the employer is yes or no; either this person is an American citizen, is here on an H-2A visa, whatever their status is, as long as it is legal, it will have simply a yes. And that would be the only information that would possibly get out there. And, again, that is information that the Government already has today. So that would not be used for banks or any other entities.

Mr. KING. Mr. Dreier, it says on the card: "This is not a national ID card." And there is a guest worker component to your bill, as I understand it.

Mr. DREIER. No, there is no guest worker component. But I just said that I am supportive of a guest worker component, because I believe that if you are going to reduce by 98 percent the number of illegal border crossings, and you are, with the existence of this

card, going to bring the 11-plus million people who are illegally here out of the shadows, you are going to have to have some kind of worker program. So I believe that this will have to be in concert with that.

Mr. KING. Recognizing then that the card says, "This is not a national ID card," will the guest worker plan also say, "this is not an amnesty plan," one that you might support?

Mr. DREIER. Absolutely. And the President of the United States has said that he does not support an amnesty plan, and I have said that time and time again. And so I don't know that the guest worker program will absolutely say that, but I am clearly on record, as is the President of the United States, in opposition to a plan which does grant amnesty.

Mr. KING. I thank the gentleman for his response.

And the Chair would recognize the Ranking Member, the gentlelady from Texas.

Ms. JACKSON LEE. I thank the distinguished Chair. And I think I will thank the Chairman for holding this hearing on an important initiative. Let me thank the witnesses for their testimony as well, some of which I had the opportunity to review, and thank them for their indulgence. When there are overlapping meetings, I appreciate very much your indulgence.

I think none of us would disagree with the idea of a more secure Social Security card. I am looking at the criminal penalties in this bill, and I guess I would argue that the measures that would be established to deter American employers from hiring undocumented alien employees, this database gives me great concern. And the question of privacy is one, but the use of the database—and I will ask that my statement in its entirety, Mr. Chairman, be included in the record. Ask unanimous consent.

Mr. KING. Without objection.

Ms. JACKSON LEE. But I will highlight a few points that I am concerned about. This bill, H.R. 98, would require Social Security cards to be issued on plastic instead of on paper, and it would require the placement of an electronic strip on the card so the bearer's information can be encrypted and stored on the card itself. Employers would be able to use the card to access an employment eligibility database to confirm that a prospective alien employee is authorized to work in the United States. It also requires physical features to prevent counterfeiting, tampering, and duplication of cards.

H.R. 98 directs the Department of Homeland Security to establish a database that includes the citizenship or residence status, work eligibility, and other data provided by the Social Security Administration for all noncitizens who are authorized to work in the United States. A database this large is likely to contain many errors, any one of which could render someone unemployable and possibly more, worse, much worse, until they can get their file straightened out. It has been difficult to establish systems to update and correct errors in other immigration databases, and this one would be unusually large.

The act includes a confidentiality requirement and restricts access to the database, but it may not be possible to enforce these limitations. Moreover, once the database has been created, its use

would almost certainly expand. We need to know what it would cost to establish, maintain, and secure such a large database. I go on to note that it would increase the sanctions, and, of course, it has a criminal penalty.

Mr. Rotenberg, we concede the fact that a secure Social Security card is a very positive initiative. You noted concerns as it relates to privacy. If we wanted to fix this legislation and be as astute in our fixing as we possibly could, where would you first start?

And before you answer the question, let me also say this. I listened to the Chairman, and I appreciate, I believe I understand Mr. Dreier has indicated that he is not for an amnesty program, but I assume some form of allowing individuals to access some form of legality while they are here in the United States. And if I am incorrect, you can share that with me, Mr. Dreier, after Mr. Rotenberg raises his concern. But in that, it seems as if this bill is conflicted even if it refers only to new hires, because the individuals who are looking to be employed in some of these sectors are going to be by their very nature undocumented. That means the employers, I assume, in the agricultural industry and hotels and service industries will then be barred, if you will, from an employment base that most of us accept the fact is important.

Mr. Rotenberg, would you share with us how we might be able to add some secure measures to this legislation?

Mr. ROTENBERG. Congresswoman, thank you very much for that question. I think the key point here is that all the sanctions in the bill concern the unlawful hiring by the employer. There are no sanctions in the bill for the misuse of the information that is on the card or for the improper access to the data that is collected by the Federal Government. And so first thing we would recommend is imposing some sanctions to ensure that the card is not improperly used.

Now, this is not a new problem. The States have been wrestling with the misuse of the Social Security number, for check cashing, for example, for many, many years. And you are about to propose a document that will be more reliable to establish identity, which will also, therefore, become attractive to private businesses and others.

So I think the first thing that has to happen is to create some sanctions to prevent misuse.

Ms. JACKSON LEE. Mr. Dreier, would you welcome those provisions being added? Welcome to the Committee.

Mr. DREIER. Well, thank you very much, Ms. Jackson Lee. I appreciate your being here. And we are on opposite sides where we usually are. I will say that I obviously want to do everything that I can to work with our shared goal of establishing a counterfeit-proof Social Security card. And this is really the beginning of a process, and I am not going to tell you that we have put together the absolutely perfect bill that can't be amended, because I realize that it will have to go through a process here in the Congress to make this happen. So, sure, I welcome any kind of input at all.

To your other question that you raised of me, let me say that on the issue of amnesty, that is a very troubling and difficult one. But when I say amnesty, I am talking about making people automatically American citizens. I do think it is essential that we take

whatever steps possible to get people out of the shadows who are here. I think it is in our national security interest to do that. But I don't want them to be able to somehow move to the front of the line and preempt people who are waiting to have an opportunity to become American citizens.

And I will say that it was difficult for me, but my friend Mr. Lungren talked about the fact earlier that he was the floor manager on the Republican side for the 1986 Immigration Reform and Control Act. I ended up anguishing over that, but I ended up voting against it because I was concerned at the prospect of amnesty creating a magnet for people saying, gosh, they are going to make you American citizens or LPR, legal permanent residents, then it might create a draw for people to come in illegally. I don't know whether or not the existence of the 1986 IRCA did, in fact, create that situation, but I will tell you this: I do believe that the existence of what we are trying to do under H.R. 98 would diminish that magnet even if we do figure out some way to bring those 11 to 21 million people, however many people there are here illegally, out of the shadows.

Ms. JACKSON LEE. I think, Mr. Chairman, I have additional minutes, because it is added to——

Mr. KING. Without objection, the gentlelady will be recognized for an additional minute.

Ms. JACKSON LEE. I think, Mr. Dreier, we have some common ground. I think we should take the word "amnesty" out of our vocabulary, but it always gets attributed to any of us who believe there should be some way of accessing citizenship—I use the terminology "earned access," with a whole litany of criteria. And I guess the very point of this legislation, one, you have at least offered the suggestion that you would remain open. My concern does deal with the security and the protection of the database, and I would like to engage you on that. But I also would say that I hope that, as this Committee meets, the Rules Committee meets, the Homeland Security meets, and a number of other jurisdictional Committees, that we can talk about comprehensive immigration reform.

Mr. DREIER. Let me say, you all do it long before it gets to the Rules Committee. We will be the last stop for you.

Ms. JACKSON LEE. Well, your perspective as an individual Member is important, but what I think is important is that all initiatives be given consideration, whether it is a bill introduced today or Save America, a comprehensive bill that I have introduced. I think they all have elements.

So I would just offer, Mr. Chairman, that this Committee really needs to look—in addition to issues that are isolated around important points, they need to look at comprehensive reform as well, and I hope we will be able to do that.

Mr. DREIER. Mr. Chairman, could I ask unanimous consent along—I know that Chairman Hostettler asked unanimous consent that our statements appear in the record, but I referred to a couple of articles, and I have some letters in support of the legislation that I would like to have included in the record.

Mr. KING. Without objection, so ordered, Mr. Dreier.

Ms. JACKSON LEE. And I would like to submit the Chamber of Commerce United States of America letter dated May 12, 2005, to

both the Chairman and myself, the Ranking Member. I would like to ask unanimous consent to submit it into the record signed by Randall Johnson, vice president.

Mr. KING. Without objection, also ordered.

Mr. DREIER. Mr. Chairman, if I could just respond to the letter from the Chamber of Commerce. I would like to say that we have been in touch with the United States Chamber of Commerce and are working with them to see if we can find areas of agreement. I know that they are generally supportive of the notion of trying to establish some kind of counterfeit-proof Social Security card. The letter to which Ms. Jackson Lee has just referred and now has been entered into the record raises concern about the penalties. And I think that we are going to continue working with the Chamber of Commerce to try and see if we can come together on that as well. Thank you.

Mr. KING. I thank the——

Ms. JACKSON LEE. We all work together. Thank you.

Mr. KING. At this point in the hearing, duty calls me, and I will yield the Chair to the gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. [Presiding.] Thank you.

And at this time we will hear from the gentleman from California. You have questions? For 5 minutes.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Rotenberg, you seem to talk about the magnetic strip being a problem. If I understand it correctly, the gravamen of your concern is that some private parties could utilize the information on the magnetic stripe for purposes other than just identification?

Mr. ROTENBERG. That, with the addition of the stripe, the card becomes more useful for identification to other parties. Yes.

Mr. LUNGREN. But I mean, are you saying they would try and take information off that magnetic stripe other than just the identity of the individual?

Mr. ROTENBERG. No, I am not. I am saying that when you make a card machine-readable, you create more opportunities to collect the information that is contained on the card. For example, let us imagine trying to board an airplane in the United States a few years from now. You might decide to have an identity document that is machine readable so that you can get people on to the plane more quickly. The information that is disclosed on the magnetic stripe is the same information that would be displayed at the terminal to whoever would ask for the card.

But by making it machine-readable, it becomes more accessible. So this is a significant functional change in the Social Security card that is being proposed. It is different from the tamper-proof elements that are contained in a card, for example, that is made of plastic or includes a hologram.

Mr. LUNGREN. So you would like, I assume, some penalties attached to those who would misuse information that they could access from the magnetic strip.

Mr. ROTENBERG. Well, absolutely, or to the database.

Mr. LUNGREN. Mr. Dreier, you wouldn't have any objection to that, if that were the concern? That is, somebody abusing the use to which that was supposed to be made.

Mr. DREIER. Absolutely not. Of course not.

Mr. LUNGREN. Interestingly enough, Congressman Dreier, when you talked about IIRIRA and wondering whether that caused more people to come over the border, I thought that Congressman Reyes' comments were instructive on that following the passage, initially he saw a significant dip and it was only after there was a failure to enforce that we saw that rise, which commends itself to your attention, such that we ensure that that not happen again and that the enforcement mechanism be timely but continuous.

To that regard, let me address a question to both you and Mr. Bonner, and that is, if we had sufficient money to add 100,000 people in terms of enforcement of our borders, interior and borders, in terms of immigration, would that have an impact on the enforcement level?

Mr. DREIER. Well, let me just say, again, as I did a few minutes ago, that I believe that if we were to see just a few high-profile arrests and convictions, there would be a great diminution in the numbers of illegal hirings. And so, you know, we have chosen a number of 10,000 enforcement agents here to be hired. And that is—again, that came from the work that I did with T.J. Bonner, and working in concert with our staff and all.

I do not know that increasing to 100,000 enforcement agents would somehow create a much better situation. We have got to enforce it. I mean, we know that.

Mr. LUNGREN. Let me ask Mr. Bonner, if you had in the last 10 years 100,000 additional agents, enforcement, investigative officers, attorneys, *et cetera,* or an additional number of people—in excess of 10,000, but whatever number you thought—and then the balance of that money used for increased detention facilities, would that have made a difference?

Mr. BONNER. It would have made some difference, there is no doubt about it. But the current law is flawed; that is the problem. We put the burden on the employers to discern from dozens of different types of documents, all of which can be easily counterfeited, whether the person has a right to work.

So we would——

Mr. LUNGREN. So we need the laws and we need people to enforce them.

Mr. BONNER. Well, we need a change in the law so it makes it easy for the employer to figure who has the right to work. And then, of course, we are going to need enforcement agents to go around and keep people honest.

As Congressman Dreier says, you do not need to go out and levy thousands of fines every year. The IRS does not audit everybody every year. They do not fine that many people. The ones they do make the front page of the paper, and people are sufficiently intimidated to be honest on their taxes.

Mr. LUNGREN. See, what I get out of this testimony is that it is a question of us establishing priorities at the Federal level, and we are the primary, if not the exclusive, agent under the Constitution for controlling our borders.

The reason I picked 100,000 is that happens to be the number that was promised by an administration through the COPS program of increasing cops on the street at the local jurisdictions. And while we were busy trying to pretend that we are the primary obli-

gator of local law enforcement, we fail to put the money into those things we are supposed to do. And that is why I say 100,000.

What if, instead of having a, quote, unquote, COPS program, we would have had over the last 5 years, or the last 10 years, that money and that attention put into the enforcement of our immigration laws. It seems to me we would have had a real impact. And the problem is that we in Congress and many in Government spend time trying to find other things that we should do rather than things that we are obligated to do. It is not a question that we don't have the money; we put the money in to put 100,000 cops on the street, so we can talk about it instead of doing this.

My point is, we have the ability to put the emphasis there if we wish, and we need the tools that are suggested in this bill.

I thank the Chairman for his indulgence.

Mr. GOHMERT. [Presiding.] Thank the gentleman from California.

At this time, the Chair yields to the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Mr. Acting Subcommittee Chairman Gohmert from Texas. This has been quite a series of leadership changes in Judiciary.

Gentlemen, we have got what constitutes to me some ambiguity about this program. I am looking, first, at the recognition that Social Security numbers and record information is essentially a matter of keeping information on who is working and is directed toward the Social Security Administration. And what Mr. Dreier's well-intentioned legislation would do now is to transfer this Social Security number information to the Department of Homeland Security. That would dramatically expand Homeland Security to include a determination of who is eligible to work in this country and what should happen to employers that may violate the law, including up to 5 years imprisonment.

Now, the question that I raise with Mr. Rotenberg is this: Can we pursue both of these goals and share this jurisdiction and criminalize employer behavior and include, possibly, biometric strips which could introduce other information and move us toward this national identity card without creating some serious problems about the integrity of the Social Security card itself?

Mr. ROTENBERG. Congressman, I think that is the critical question, and you put it very well.

One of the key points about the history of the Social Security number in this country is that the Social Security Administration itself has always been very protective about the use of the number. They understood, and the law makes clear, that the reason for the number is to administer the Social Security benefits program. And all the proposals that have come forward over the years, including the expansion of the use of the SSN for a tax identification number in 1961 was opposed by the Administration because of the concern that the number would become a de facto national identity number.

Now we are at a point in time when the Department of Homeland Security is trying to use the Social Security number to enforce a border control policy and determine who is eligible to work in the United States. And they are looking to the Social Security number as a way to enforce those restrictions.

And you can see, as I tried to suggest in my testimony, this will come at a cost to privacy both in the use of the SSN, and also in the fact that this other agency, the Department of Homeland Security, will now have other opportunities to use these records for other purposes.

So this is a very difficult problem, and I do not think the legislation, at least as it is currently drafted, solves it.

Mr. CONYERS. Could I ask Chairman Dreier to weigh in on this same question?

Mr. DREIER. Absolutely. I would like to.

It gets back to what I raised in my opening remarks. When we have an instance, as we did in Chicago, where a woman who had a Social Security card, an American citizen had a Social Security card, and found 37 instances, 37 different people who were here illegally utilizing that SSN of hers, I think that raises the specter of concern here.

Now, I know full well that if you look at the problems that we have of illegal immigration—I am from Los Angeles. If you look at the problem, there has not been a single one, a single terrorist from Latin America. We know that. There is no terrorist threat that is posed by our very, very important neighbors to the south.

But I will say this: Of those 37 instances of people who are here illegally, who used that woman in Chicago's Social Security number, we do not know where they came from. I do not know where they came from; all I know is that there were 37 of them.

So I think that what has happened here is—and, you know, going back to 1961, going back to 1935 when the Social Security law was signed by President Roosevelt, we didn't have a Department of Homeland Security. We did not have what took place on September 11, 2001. Our world has changed.

Now, that doesn't in any way diminish our commitment to civil liberties or our commitment to the right to privacy. But obviously, we have all sacrificed since September 11. And Members of this Committee are going to airports, and every single person who has traveled has had to pay a price because of what happened on September 11.

I am not saying that we should in any way encroach beyond what is necessary when it comes to the right to privacy and the civil liberties of the American people, but I do think that this instance that I just talked about does raise a justifiable concern.

Mr. CONYERS. How would you feel, Chairman Dreier, were this to go—instead of going to the Homeland Security Department, it would go to the Department of Labor, for example, which would seem to have more concern about the authorized or unauthorized employment of people within the United States?

Mr. DREIER. I understand that concern. But again, you heard what I just said.

I mean, while most of the people who are in this country illegally are here for one reason and one reason only, that is, to feed their families, we do know—and we call this H.R. 98; Mr. Bonner said it will reduce by 98 percent the number of illegal border crossings. Why? Because the people who are coming in are simply seeking economic opportunity. They are the 2 percent, those 2 percent who

potentially pose a terrorist threat or are criminals in other ways here.

Now, I do not want those people to—as potential terrorists or criminals, to have an opportunity to slip through. And so I certainly agree. But I do not know whether the Department of Labor and the Social Security Administration are in a position to deal with that other 2 percent.

Mr. CONYERS. I get your point here. But wouldn't it—do we have to take over a whole department just to protect us against people who might come up with fraudulent Social Security cards?

And, by the way, we probably do not have a lot—we may not have a lot of evidence, if this ever happens, that these cards would sooner or later not be as vulnerable as the present cards were. So what I am thinking is, I can think of other agencies that might fit under Homeland Security, if it is the basis of getting every last violator, based on the case that you reiterated to us.

Mr. DREIER. I think it is a very fair point about what potentially could happen to this counterfeit-proof Social Security card. But remember, the flimsy little piece of paper that is now in Jo's wallet, I presume, behind me, and I am no longer holding, is what has existed since 1935. We haven't even made an attempt since 1935 to update this; and we have celebrated the anniversary of the Social Security system.

We are talking about reforms in this area, but we have done nothing. And so I am just hoping that we can at least make a step toward bringing the Social Security card itself into the 21st century.

Mr. CONYERS. Thank you. I would rather us pass a law or entertain some proposals, rather than turning this over to Homeland Security.

Mr. DREIER. On the Homeland Security issue, you said, turn it over because of the problem of, you know, employment. We have a Department of Homeland Security for one reason and one reason only; that is, we are faced with a terrorist threat that we did not believe existed before September 11 of 2001, and that is the reason this Department was put into place. That is what has raised this concern that hadn't existed before that.

Mr. GOHMERT. Well, at this time, I yield myself 5 minutes, and I appreciate you all's testimony. These are difficult issues, and as with so many of the things we deal with, it requires a great deal of balancing.

Chairman Dreier, I have heard lots of people say over the years and especially more so the last few years, that there is absolutely no way to round up millions of people who are illegally here and deport them, that we simply do not have the resources in this country to do it. And it occurs to me that this could be one of the answers.

Is that one of the considerations in coming to this?

Mr. DREIER. Absolutely. And my friend, Mr. Bonner, has pointed this out on several occasions. If you have people, if there are 11 to as high as 21 million people here illegally—and this card can obviously be duplicated very, very easily.

But this one, the idea behind it, we hope won't be able to be duplicated. If anyone who is here illegally is hoping to get a job, they

are looking for a new job, they won't be able to get that job if they do not have one of these. And they cannot have one of these unless they are here legally.

And so what does that say to someone who is here illegally? I might as well go home, because I can't feed my family in the United States without this.

So you are absolutely correct, Mr. Gohmert, the notion of—again, as I said, that is why I am for a worker program, bringing people forward, bringing them out of the shadows. I mean, it is a security threat to us to have literally millions of people here illegally because among them could be potential terrorists.

And so to allow the Border Patrol, to allow the 10,000 people who work with T.J. Bonner to spend their time and energy on the criminals, the potential terrorists, rather than on people who are simply trying to feed their families is what this card will allow those enforcement people to do.

Mr. GOHMERT. Thank you.

Mr. Rotenberg, of course, you have heard the other testimony as well. And I appreciate your insight, because you bring up some very important issues.

And, of course, going back to 1935, as I understand it, there were concerns back then that the number might be used as a national identification number; and there were assurances it would never be used for anything but identifying an account that the Government would have.

But you made the comment that the Social Security Administration has been so protective—words to that effect—of this information, and yet I wonder, have you ever sent in your income tax return without your Social Security number on that, or tried to go to the White House without a Social Security number?

It seems like it has been pretty well established and accepted as it is; this is a number that you are going to have to utilize to get anywhere. You surely have to acknowledge its widespread use at this point, whether we change the card or not.

Mr. ROTENBERG. That is certainly true, Congressman. My point was simply that the Social Security Administration has typically opposed the expansion of its use, and I think for good reason.

As I mentioned earlier, one of the things that we have seen this year has been the dramatic explosion of identity theft in the United States. And that is a final crime that is enabled by having access to someone else's Social Security number. And all of the advice that the banks and the consumer agencies and everybody else is giving American consumers today is to limit the disclosures of your Social Security number.

So when you propose to make that number machine-readable and encourage employers and others to have access to it in digitized form, I think you are creating new risks that that number is going to be misused. That was simply my point.

Mr. GOHMERT. Are you saying employers, up to the time of this bill that we are considering, do not have Social Security numbers already?

Mr. ROTENBERG. No. Of course—the employer is required, in fact, to collect this.

Mr. GOHMERT. That is already out there.

Mr. ROTENBERG. They use it for tax reporting purposes. But we haven't yet in this country——

Mr. GOHMERT. And it is generally on most of our—as part of our paychecks and things like that. I mean, it is already out there. It does not seem that this would change that at all.

Mr. ROTENBERG. Right. Certainly, Congressman, it is out there, and I am simply suggesting that there is a real effort under way in this country right now to try to limit its availability because we are beginning to see the consequences in terms of a certain type of crime.

The other thing I would just like to mention briefly is that in 1974, when Congress passed the Privacy Act, which was very important legislation to make sure that our personal information would not be misused by the Federal Government, they also very clearly tried to limit the use of the Social Security number. They did not want the Social Security number to become a general record identifier across the Federal agencies.

And I think this is another issue that we need to consider, because with this bill, you are now giving the Department of Homeland Security the opportunity to use that Social Security number as an identifier for American citizens. I do not think it is something that the Congress that passed the Privacy Act would have supported.

Mr. GOHMERT. Thank you.

Just in closing this out, I will give each of you a chance, 2 minutes, if you would like to make a final closing statement for the record.

Mr. DREIER. I think I have talked longer than anybody here, Mr. Chairman. You have been very kind.

I just will express my appreciation again to you, and Mr. Fishman and all of your colleagues on the Committee for giving us an opportunity to do this.

We want to work and put together a piece of legislation which will help us secure our borders, deal with this great challenge that we have of illegal immigration, and I hope we will be able to welcome you all to the Rules Committee with this legislation before too terribly long.

And I know that Mr. Bonner, who is—he is a very thoughtful guy and has a lot to offer, so I hope he will offer some closing remarks.

Mr. BONNER. Mr. Chairman, a couple of points I would like to address:

The information on the back of that card would be readable by the Federal Government. The employer would get a "yes" or a "no;" they would not have access to the information on there.

And also, Homeland Security, as we speak, has a role. The former INS was folded into the Department of Homeland Security, and they do have a role in working with Social Security when foreigners come into the country applying for Social Security cards; your resident aliens, they have to be cross-checked through the INS. So this really is not some brand-new burden or brand-new expansion of Government powers.

I would like to say that this piece of legislation, from the standpoint of the frontline employees who are out there enforcing our

immigration laws, is the single most important step that can be taken to allow us to secure our borders. And we want to do that.

But we are just overwhelmed at this point. There are 10,700 uniformed Border Patrol agents to provide 24/7 coverage for 6,000 miles of land border between the United States and Mexico and Canada. And figure at any given time, at best, you have 25 percent of that workforce out there, because you are running three shifts a day, 7 days a week.

The odds are stacked against us. With millions of people flooding across the borders every year in search of employment, we simply cannot control the borders. We have no idea who is getting by us. Our biggest fear is that terrorists and criminals are getting by us.

This would enable us to reduce that number from millions down to thousands, and would allow the United States Border Patrol to actually secure our borders. So I urge the Congress to pass this very important legislation.

Thank you.

Mr. GOHMERT. Thank you.

Mr. Rotenberg.

Mr. ROTENBERG. Mr. Chairman, I just want to thank you, of course, for holding this hearing. I appreciate the opportunity to be here.

You know, the American public feels very strongly about the privacy issue, and the use, and the possible misuse, of the Social Security number has always been a critical concern.

I appreciate what the Members are trying to do with the legislation. We really have no views on the efforts that Congressman Dreier is pursuing regarding illegal immigration.

But as to the privacy impact on American citizens, because all of us will have this new Social Security card, it will be very real. And I am hoping that as a result of the issues that were raised during the course of the hearing, there will be an opportunity to work with the Members of the Committee and staff, and certainly Congressman Dreier, to see if there will be ways to address these privacy concerns.

The decisions that you make about the establishment of identification systems will be with us for a very long time to come; and what you decide to do or not do about the collection and use of the Social Security number is going to be the way it is in this country for a generation or more. That has been our experience with the current Social Security card.

Mr. GOHMERT. Thank you. And we do appreciate each Member's testimony.

The gentlelady from Texas.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Mr. Rotenberg, I would like to take you up then.

Mr. GOHMERT. Excuse me. Were you wanting to ask additional questions?

Ms. JACKSON LEE. Yes, sir.

Mr. GOHMERT. We didn't end up having another round at this point. They each just made final, closing statements.

Ms. JACKSON LEE. Well then, let me ask unanimous consent to pose a comment to Mr. Rotenberg, and he can respond to me in writing.

Mr. GOHMERT. That would be fine.

Seeing how it is you and me, the Chair will yield to you, allow you to ask your question, and allow Mr. Rotenberg to answer here.

Ms. JACKSON LEE. That is very kind of you, sir. Thank you very much.

Mr. Rotenberg, I want to take you up on your challenge and accept Mr. Dreier's open-mindedness to find a way to add provisions to the legislation, or to look at initiatives that might deal with the privacy question. It may be larger than we all might imagine.

But you indicated provisions. Do you have specifics that you might be able to share with us very quickly at this point?

Mr. ROTENBERG. I would be happy to, Congresswoman.

In addition to sanctions on misuse, I think there are security techniques that could be added; I think there are other limitations on access to the database and, frankly, the role of the Secretary of the Department of Homeland Security. And how that information might be used for our purposes, I think, is something that the Committee should consider.

Ms. JACKSON LEE. We will then take you up on that offer.

I would hope, Mr. Chairman, as I close, that this bill has certainly—the hard work of Mr. Bonner, we thank you very much.

My colleagues, Mr. Reyes, Mr. Dreier, I think it is worthy of our further consideration. I think there are elements of it that are intended to be very strong, but I think we need to look at the far-reaching impact, particularly the prison sentencing, if you will.

I believe in employer sanctions. I believe we have to address the question, but I think we need to find a way comprehensively to make sure that it will actually work.

And I thank the Chair very much. I yield back.

Mr. GOHMERT. Thank the gentlelady from Texas.

Thank you, witnesses. Each witness or each Member who wishes to revise and extend their remarks may do so within the next 3 legislative days.

I would like, in a final comment, though—Mr. Rotenberg, you continue to raise a very important question about the use or misuse of the Social Security number. And what occurs to me is, it is so easily used and misused now with these cards that are now 70 years old, that it seems that the efforts of Chairman Dreier and Mr. Reyes and Mr. Bonner and those that have worked on this may actually help to curb the misuse. And that is my one thought.

Appreciate your comments. If you wish to revise and extend, you have 3 legislative days. At this time, the hearing is adjourned.

[Whereupon, at 3:45 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

The Illegal Immigration Enforcement and Social Security Protection Act of 2005, H.R. 98, was introduced by Rep. David Dreier on January 4, 2005. H.R. 98 is intended to improve the security of social security cards and make it more difficult for undocumented immigrants to work in the United States. I agree that we need more secure social security cards. I am opposed, however, to the extreme measures this bill would establish to deter American employers from hiring undocumented alien employees, and I have a number of concerns about the large database that the bill would require to enable employers to confirm that a prospective alien employee is authorized to work in the United States.

H.R. 98 would require social security cards to be issued on plastic instead of on paper, and it would require the placement of an electronic strip on the card so the bearer's information can be encrypted and stored on the card itself. Employers would be able to use the card to access an employment eligibility database to confirm that a prospective alien employee is authorized to work in the United States. It also requires physical features to prevent counterfeiting, tampering, and duplication of the cards.

H.R. 98 directs the Department of Homeland Security (DHS) to establish a database that includes the citizenship or residence status, work eligibility, and other data provided by the Social Security Administration (SSA), for all noncitizens who are authorized to work in the United States. A database this large is likely to contain many errors, any one of which could render someone unemployable and possibly much worse until they get their "file" straightened out. It has been difficult to establish systems to update and correct errors in other immigration databases, and this one would be unusually large.

The Act includes a confidentiality requirement and restricts access to the database, but it may not be possible to enforce these limitations. Moreover, once the database has been created, its use would almost certainly expand. We need to know what it would cost to establish, maintain, and secure such a large database.

H.R. 98 would require prospective employees to obtain a new social security card from the SSA and to present the card to a prospective employer before employment commences. It would prohibit employers from hiring any individual without verifying that the prospective hire possesses a new social security card bearing a photo and is authorized to work in the United States.

H.R. 98 would increase the sanctions available for hiring an undocumented alien employee. It does offer some degree of protection against the imposition of unjust or unwarranted sanctions. It provides that employers who act in good faith will not be liable if the hiring of someone who is not authorized to work was due to an error in the verification system that was unknown to the employer, and the employer terminates the employee upon being informed of the error. This is a start, but we need better precautions against mistakes in imposing the new sanctions.

H.R. 98 authorizes DHS to impose penalties on employers who hire an alien known not to have work authorization or without using the verification system. The amount can be as much as $50,000 per violation, but it also permits DHS to require the employer to pay the costs incurred by all levels of government for removing the alien. It authorizes DHS to bring a civil suit in a district court if necessary to secure payment of any penalties. Moreover, it establishes criminal penalties, including imprisonment for up to five years for employers who knowingly hire someone who is not authorized to work in the United States or who fails to verify the work authorization of any new hire.

The employer sanctions are too harsh. It is not necessary to authorize DHS to fine employers up to $50,000 for each violation, and it is excessive to authorize up to five years of incarceration for hiring undocumented employees. It is not apparent why we need harsher sanctions in any event. The existing sanctions have not been widely enforced yet. We do not know whether harsher ones are necessary.

Thank you.

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IDs Sold To Illegal Immigrants

April 20, 2005

The United States is currently undergoing the largest wave of immigration in over a century. But what makes this wave like no other is that so much of it is illegal.

There are approximately 11 million illegal immigrants now in the United States. That equals the population of Ohio. These immigrants are coming for jobs, of course. But to be hired by an American factory, they need documents.

So a black market of identities for sale has sprung up and has spread from the Southwest, where Hispanic immigrants used to settle, to places in the heartland, which will never be the same. **Correspondent Bob Simon** reports.

If you ever go out looking for the American heartland, when you get to Schuyler, Neb., you'll know you've found it.

The face of the land is unmistakably the wind-swept Plains of the Midwest. But increasingly, the faces of the people who live here are Hispanic.

Eighty percent of the first graders at Schuyler Grade School are Hispanic. But that wasn't always the case. Back in 1985, there wasn't a single Hispanic student at this school. Today, Schuyler is moving to a different beat – and that's fine with Schuyler's mayor, Dave Reinecke.

"What would you rather have, if you were living here in Schuyler?" asks Reinecke. "Would you rather have growth, or would you wanna pick and choose where they came from?"

This town of 5,000 is home to so many immigrants because of the Cargill Meatpacking Plant on the edge of town. Eighty percent of the plant's 2,100 workers are Hispanic. But this is not your typical story about making it in America.

Ivan Hernandez and Juan Marino of Mexico have worked at the plant under false identities. They can't show their faces because they're in the United States illegally. And, they say, they're hardly the only ones.

"I think if the immigration services raided any of the meat plants in the area, I think all the plants would be left with practically no workers," says Hernandez, who adds that 40 percent of the workers at the Cargill plant are here illegally.

It's a number that is disputed by Mark Klein, Cargill's public relations officer. "I don't think it's possible," says Klein.

"How many would you estimate are what we call 'illegal immigrants?'" asks Simon.

"I have no reason to suspect that any of them are," says Klein.

To get a job with a company like Cargill, you need papers. ***60 Minutes Wednesday*** sent two staffers - production assistant Ignacio Garcia, and cameraman Ray Bribiesca - to Nebraska to find a man known in Schuyler's Hispanic community for peddling documents.

Posing as illegal immigrants looking for work at the Cargill plant, Garcia and Bribiesca went undercover and found their man, bar owner Michael Cuba.

Garcia asked how much he'd have to pay for a Social Security card and a birth certificate. Cuba said the price was $1,300 for both. Garcia wanted to know if the Social Security card would be authentic. Cuba said yes. Then, Garcia and Bribiesca told Cuba they'd come back in 48 hours with the money.

Schuyler's police chief, Lenny Hiltner, knows that stolen identities are being sold around town. How? By the phone calls he gets all the time from angry Americans. "And that ranges from the city of Schuyler to Texas to California," says Hiltner. "Victims that have had their identity stolen, and have found that they're either wanted in Nebraska...."

"In other words, a guy sitting in a Texas finds out that he's wanted for a crime in Nebraska, then calls you, realizing that somebody has stolen his identity?" asks Simon.

"Correct," says Hiltner.

But illegal immigrants aren't just flocking to Nebraska. Go to almost any city in America today and you'll see them hanging out on street corners, waiting for employers to drive by and give them work.

Terry Anderson is an auto mechanic from South Central Los Angeles who found his true calling as the host of a one-issue talk show. The issue of his show is illegal immigration: "There are so many people that are angry about illegal immigration, the lack of enforcement, the numbers, the school system, the lack of entry level and skill jobs for American citizens, and American legal immigrants, that now this subject is just huge."His show is syndicated nationwide, and every Sunday night, the phone calls pour in from all corners of the country.

"Illegal immigration has been going on for a long time," says Simon. "Why is it such a hot topic now?"

"Because it's gotten so much worse, so much faster," says Anderson.

And perhaps no state has been affected as much as Arizona. That's because most illegal immigrants these days cross into America along the Arizona border.

The U.S. Border Patrol says that in 2004, it apprehended 235,000 people trying to cross the border illegally in Cochise County, Ariz. And it's estimated that for every person who's caught, four make it across the border. That means that in Cochise County alone, around a million illegal immigrants crossed into the United States last year.

Using high-tech equipment, the border patrol scans the ground day and night. But border patrol agents say they may be fighting a losing battle. The volume is simply overwhelming, and the fence separating Arizona and Mexico is underwhelming in the extreme. In some places, there is an actual wall. But for most of Arizona's 350-mile border, there is nothing more than a tattered barbed wire fence, cut and clipped every night by people coming across.

"All you need is a pair of wire cutters and you can come through, come through at will," says Jack Ladd, a longtime rancher in Bisbee, Ariz. The border with Mexico runs for 10 miles on his property, and about 100 illegal immigrants cross his ranch every day. Just one step separates you from Mexico and the United States.

"We are the United States of America, free country, land of immigrants. And I don't know that you wanna put up a wall or a fence around this country -- because that's not really what we're about," says John Torres, who works for Immigration and Customs Enforcement (ICE), the successor to the INS.

Torres says stopping poor Mexican workers from getting into America is by no means his biggest problem – especially after 9/11: "Do we wanna go out and arrest a kitchen worker, or do we wanna go out and arrest someone who is a visa overstay, who has a HAZMAT driver's license -- who might actually have access to a nuclear power plant?"

"Does that mean that a Mexican who's coming in here illegally to go work in a meatpacking plant now has an easier ride than he would have had before 9/11?" asks Simon.

"I wouldn't say he has an easier ride," says Torres. "I'd say he's lower on the priority scale."

Even when violators are caught at the border, there is limited room at detention centers, so many are simply set free. They are told they have to report to a court within six months, and given letters to that effect. But more than 90 percent never do.

Last summer, a ***60 Minutes Wednesday*** camera caught two Guatemalans and two Hondurans leaving a detention center with those very letters. After a quick wave goodbye from a border patrol agent, the four proudly

displayed their letters, and then proceeded to disappear. They would certainly start looking for work, and they would be most welcome in places like Schuyler.

"What would've happened to Schuyler if it had not been for this influx of 'illegal immigrants'?" asks Simon.

"Well, we could've been like a lot of other rural communities in Nebraska," says Reinecke. "We could've lost half our population, and who knows? We haven't."

Many American towns have been kept alive by the wave of illegal immigrants. But this has given American businesses little incentive to raise wages on the low end of the scale. And many will tell you that illegal immigrants are only doing the jobs Americans don't want.

"They are taking jobs that Americans will not take at that wage. Let me give you an example. Janitors in Century City and Beverly Hills, 10 years ago, were all making $11 an hour," says Anderson. "All of those companies got rid of the Americans, broke the union, brought in illegal aliens from Mexico and El Salvador. Paid them five bucks an hour. You gonna tell me those black janitors don't still want those $11 jobs? Sure they do. They would probably be $15 jobs now. But guess what happened? They weren't gonna take 'em at $4 and $5 an hour."But Ivan Hernandez would, and did. He says companies know exactly who they're employing and why: "I'm telling you it's a game. They want us to work because they know that we have no rights here, so they know we're only going to work and work. They produce a lot while we get miserable wages. And since we have the need, we have no choice."

To get his job at the Cargill meatpacking plant in Schuyler, Hernandez bought the Social Security card of a Californian on the black market. How does he then go about getting a job?

"I memorize the Social Security number, the birth date on the birth certificate and the names of the parents," says Hernandez. "And when they called me for an interview, a friend had already told me what they would ask me and I got the job."

But Cargill's PR director, Mark Klein, says he doesn't believe imposters can get jobs since the company checks the Social Security numbers of job applicants with local Social Security offices. And that, he says, is more than the law requires: "I feel very good that the people that are coming here now are legal. That they do have the proper documentation."

But the Social Security Administration told ***60 Minutes Wednesday*** that it's not set up to establish whether or not more than one person is earning wages on the same Social Security card. Hence, the vendors and buyers.

"Are you saying that you don't know about this network of document vendors that's operating in the shadows of your plant?" asks Simon.

"No, I have not heard about it here," says Klein. "I've read articles that those rings exist. But, no, I've not."

Well, ***60 Minutes Wednesday*** already found one of those rings -- and it was time to go back and complete the transaction. Bribiesca and Garcia, our staffers who had posed as illegal immigrants, returned to see the bar owner who promised to provide the stolen identities needed for employment. Cuba, the bar owner, asked Garcia to go to a back room to seal the deal -- and told him his new name: Ricardo Torres Camacho.

With that name, Cuba told Garcia that he could get a job at the Cargill plant. Garcia handed over $1,300 in cash in exchange for a Social Security card and a birth certificate. He was now a Puerto Rican named Ricardo Torres Camacho.

The Social Security card looked real, and the birth certificate had an official-looking stamp, along with Camacho's birth date, birthplace and the names of his parents. ***60 Minutes Wednesday*** was reluctant to take Cuba's word for it, so we flew to Ponce, Puerto Rico, Camacho's alleged hometown.

After four days and the help of an investigator, ***60 Minutes Wednesday*** found Camacho, who confirmed that all of the information on the Social Security card and the birth certificate was correct. Not only that, Camacho said they were his real documents.

He was somewhat surprised to learn that ***60 Minutes Wednesday*** had bought his papers thousands of miles away in Nebraska.

Camacho has been homeless for the past six months. He sleeps in a filthy abandoned home in the center of town. The story he told us was that he didn't sell his documents. He lost them.

So now, we have this man, the real Ricardo Torres Camacho. And we have the documents we bought in Nebraska with the name Ricardo Torres Camacho.

But there's more. There is yet another Ricardo Torres Camacho, an illegal immigrant using the same Social Security number as the real Camacho in Puerto Rico. This Camacho lives and works in Kansas, at a meatpacking plant in Dodge City, run by Cargill Meat Solutions, the same company that told ***60 Minutes Wednesday*** that it doesn't employ illegal immigrants.

60 Minutes Wednesday went back to Klein at Cargill with this discovery. Klein told us that the Camacho at the Dodge City plant had been working there for four years. But when confronted with the evidence, Klein admitted that Camacho had been using someone else's identity.

"I'm still confident that we run it very tight," says Klein.

"But in January, you said you were confident that there weren't illegal immigrants working in your plant," says Simon.

"I was confident that, based on what we've been told, that they are legal," says Klein. "And we are going to assume that they're legal."

Adds Klein: "If they present us with the documents, we can't look at them and just speculate that because they're Hispanic or because they don't speak English that they could be illegal."

According to the letter of the law, Klein is right. An employer is not obliged to prove that a worker is legally in the United States. He just has to make what is called a good faith effort.

So immigrants continue to pour through this loophole into America, where they will be illegal -- and unofficially welcome.

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The secret list of ID theft victims

Consumers could be warned, but U.S government isn't talking

By Bob Sullivan
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MSNBC
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Linda Trevino, who lives in a Chicago suburb, applied for a job last year at a local Target department store, and was denied. The reason? She already worked there -- or rather, her Social Security number already worked there.

Follow-up investigation revealed the same Social Security number had been used to obtain work at 37 other employers, mostly by illegal immigrants trying to satisfy government requirements to get a job.

Trevino is hardly alone. MSNBC.com research and government reports suggest hundreds of thousands of American citizens are in the same spot -- unknowingly lending their identity to illegal immigrants so they can work. And while several government agencies and private corporations sometimes know whose Social Security numbers are being ripped off, they won't notify the victims. That is, until they come after the victims for back taxes or unpaid loans owed by the imposter.

It's a thorny problem that cuts to the heart of America's undocumented worker issue. Immigration opponents say it's another reason to shut the borders tight; immigrant rights groups point out that identity theft is an inevitable outcome of unfair labor laws that push foreign visitors deeper into the shadows.

Either way, immigrant imposters with the least nefarious of intentions -- simply a desire to work -- often unknowingly victimize the rightful Social Security number holders. The problem is compounded by how often ripped-off numbers are used. James Lee, chief marketing officer for private data collection firm ChoicePoint, said the average victim of immigrant-based identity theft sees their Social Security number shared about 30 times.

"The numbers get passed around a family, and around neighborhoods," he said.

"People need to wake up to this problem," said Richard Hamp, an assistant attorney general for the state of Utah who has prosecuted several cases involving stolen IDs and illegal immigrants. "They are destroying people's credit, Social Security benefits, and everything else. This problem has been ignored by the federal government, and it's enormous."

But could Trevino, and all the other victims, be warned by the government? After all, several agencies and corporations found her when they wanted her money. Until then, not a single one had bothered to warn her that someone else was using her Social Security number.

Melody Millet's husband Steve was the victim of immigrant identity theft. None of the agencies involved are trying to tackle the problem because they all benefit from it, as does corporate America, she said. The IRS and Social Security collect extra taxes, lenders sell more loans and employers get inexpensive workers. Fixing the problem and telling all the victimized consumers would upset the delicate apple cart that is America's immigration policy, she said.

"The government is forcing people to share identities because they want to provide cheap labor to

corporate America," Melody Millet said.

An undocumented immigrant worker managed to use Steve Millet's Social Security number for more than 10 years before the incident was discovered. Millet said the imposter managed to obtain a dozen credit cards, buy a car, and even a house using the stolen number and his own name. All the while, that imposter paid taxes, paid into Social Security, and took out loans using the stolen Social Security Number. All of those agencies had a record of the abused SSN; none bothered to tell Steve Millet.

"You can't find out except by accident," Melody Millet said. "They are not required to notify us. No one is required to notify you. The way it sits now, our lives were ruined. We will never have again a normal financial life."

$420 billion in accounting limbo

Quantifying the problem of immigrant imposters is a challenge; neither the IRS nor the Social Security Administration has tried. But there are some solid hints suggesting hundreds of thousands of people are currently at risk, right now lending their identity to an undocumented worker.

With every paycheck, U.S. workers pay FICA taxes, destined for Social Security funds. But each year, millions of payments are made to the agency with mismatched names and numbers. The Social Security Administration has no idea who deserves credit for the taxes paid by those wage earnings -- so no one gets it. The amount of uncredited Social Security wages is now an enormous $420 billion, an amount that sits in what's called the Earnings Suspense File, an accounting limbo.

During 2002, the year with the most recent figures available, 9 million people paid taxes with mismatched names and Social Security Numbers. Some were women who had failed to notify the agency that their name changed after marriage. Some were the result of typographical errors.

But most -- between 50 and 80 percent depending on whom you talk to -- represent illegal immigrants using a stolen or manufactured Social Security number at the workplace.

The amount of money headed for the Earnings Suspense File began to skyrocket after 1986, when a new federal law required workers to produce Social Security cards to get employment.

In 2001, Social Security reports indicated 35 percent of the wages in the fund were earned by workers in California. In 2002, about 46 percent of the wages that ended up in the fund come from immigrant-heavy industries like agriculture, restaurants and other services, according to Social Security's Office of Inspector General. Both facts suggest to analysts that much of the fund is the result of payments made by undocumented immigrant workers.

What's unclear is how many of those millions of payments made by undocumented workers are made using someone else's Social Security numbers. Audits show that many are made with manufactured numbers, such as 000-00-0000. But people familiar with the data say the list would point to hundreds of thousands of identity theft victims.

Still, James Huse Jr., former inspector general of the Social Security Administration, said it is unlikely the agency will ever inform potential victims.

"(The list) would be a terrific source of leads for the identity remediation effort, but there are so many other compelling workloads in front of (SSA) I don't know what can they do with that today," he said. "Also, the politics of immigration get involved in this."

A spokesman for the Social Security Administration said the agency simply couldn't disclose the information to consumers because doing so would run afoul of federal law.

"That information is considered to be tax return information, and it's governed under the Internal Revenue code," said Social Security's Mark Lassiter. "There are strict limitations on disclosure. Can someone see if anyone else has reported earnings under their Social Security number? The answer would be no."

The IRS also receives payments from mismatched names and numbers, and has access to the same no-match list created by Social Security. But according to IRS spokesman Anthony Burke, the agency doesn't check for number-name mismatches until it processes tax returns. And it does not have a mechanism for informing the rightful Social Security number holder that someone else has filed a return using that number.

When tax returns are filed with wrong Social Security numbers -- some 500,000 were filed last year -- the agency simply notifies the filer in writing. The rightful number holder isn't told, because there is no way to know why the wrong number was used, Burke said.

Credit reports don't help

How can a consumer unravel the secret life of their Social Security number? In fact, since neither the government nor private industry is speaking out, there is no way. Asking the Social Security Administration or IRS won't help.

Most consumers only discover the situation when their imposters take the next step up the economic ladder, securing credit using the stolen number. And even then, the victims may not be told unless the imposter misses a loan payment or otherwise sends creditors hunting for their money. That's because thanks to a quirk in the credit system, credit obtained by imposters using their real name but a stolen Social Security number doesn't appear on the victim's credit report.

This so-called "SSN-only" identity theft poses a unique set of problems for consumers and the nation's credit bureaus. If credit is granted by a lender, an entry is made in credit bureau files -- but not disclosed to the consumer who properly owns that number. Even when a consumer gets a copy of her credit report, such fraudulent accounts don't appear on the report. Instead, the bureaus create what are sometimes called "subfiles," which act like separate identities in their databases.

In fact, consumer credit reports obtained from the credit bureaus expressly leave off this kind of fraud. If an imposter is using a consumer's Social Security number but his own name and address to open up fraudulent accounts, a consumer-disclosed credit report won't include that information. The rightful number holder will never know.

A lender, however, might find out -- even see all the accounts an imposter has opened using a victim's Social Security number.

Millet, who has sued the credit bureaus, said her husband was denied a credit card even though his credit report was spotless, and he had a superb credit score of 700.

Businesses interested in giving credit to a consumer can pay to see any activity connected to a particular Social Security Number; consumers cannot. All three credit bureaus sell specialized services with names like "Social Search," that track the entire history of a Social Security number. The services are not available to consumers.

Privacy concerns prevent consumers from seeing a Social Security number-only report, said Equifax's David Rubinger.

"Companies that have signed agreements with us can access data like that. But we can't let every consumer see it," he said. It would be difficult for the firm to establish definitively who the rightful

Social Security number holder is, he said. And there would still be potentially sticky privacy issues related to revealing the imposter's information.

Don Girard, a spokesman for Experian, acknowledged his firm had seen the problem, but said it was extremely rare.

"I can tell you we have quite a few people looking into this," he said.

Trans Union did not respond to requests for interview for this report.

'Total purgatory' for taxpayers
Frustration can mount for victims of this kind of fraud. Eventually, the government agencies involved do catch up with the legitimate consumers; but often, not until they are looking for money. Victims can have trouble getting disability or unemployment benefits, Utah's Hamp said.

Others find the Internal Revenue Service on their backs, looking for payment of back taxes for wages earned by their imposters. Some see refunds held up by the confusion; others see their wages garnished.

Trevino found herself in a financial nightmare. All those imitators made a mess out of her work history, her Social Security benefits records and her credit report. She was haunted by bills and creditors. She received threatening letters from the IRS, asking her to pay taxes on money earned by her imposters. She was told to re-pay unemployment benefits she had received, after the government discovered she was "working" while drawing benefits.

"At the time I'm thinking, 'I'm unemployed. I wish I could have at least one job, let alone all these different jobs,'" she said.

"This is total purgatory that this puts U.S. citizen taxpayers into," said Marti Dinerstein, president of Immigration Matters, a public-policy analysis firm in New York. "It's a nightmare to get it stopped. And when they do get it stopped, it is only for that particular year. The whole mess could begin anew next tax season."

But neither the Social Security Administration nor the IRS tells consumers that something unusual is happening with their Social Security numbers. It seems consumers are the last ones in on the joke.

"This is the schizophrenia of the federal government," Huse, the former Social Security inspector general said. "The Homeland Security people are screaming about the accuracy of records, and you have the IRS taking money from wherever it comes."

Mismatches go unchecked
Since the Immigration Reform and Control Act of 1986, workers must produce a Social Security card or similar identity verification when obtaining employment. Employers are supposed to verify that the card is legitimate, but many don't.

By creating a black market for counterfeit Social Security cards, the law may have inadvertently kicked off the identity theft crisis, experts say.

"It's truly an unintended consequences of the 1986 immigration law," said Marilanne Hincapie of the National Immigration Law Center. "That's why there is this need for comprehensive immigration reform."

For now, with the tacit approval from all involved, undocumented workers buy counterfeit cards from suppliers who steal or simply manufacture Social Security numbers.

About 90 percent of the time in cases he's investigated, Utah's Hamp said, the numbers used belong to a real person. But even in the other cases, there's still harm done: the number may be issued in the future, meaning a baby may be born with a surprising financial past.

"You could end up at birth with a bad credit history and a work record," Hamp said.

The Social Security Administration has made some efforts to straighten out its records, sending letters to hundreds of thousands of businesses, asking that they follow-up on name/number mismatches.

In 2002, the agency sent 900,000 letters to companies that had workers using erroneous names or numbers. The letters confused employers and employees alike: some workers fled immediately, other employers fired workers on the spot.

Immigration rights groups objected, pointing out that inclusion in a no-match list was not an automatic indicator of illegal status. The effort did little to reduce the Earnings Suspense File or fix Social Security accounting, so the agency backed off.

Meanwhile, the IRS, which is charged with enforcing the requirement that employers collect accurate Social Security number data, has never once levied a fine against a corporation for failing to do so.

Change tied up with key policy shifts
The issue of Social Security number abuse is getting some attention as the Bush administration presses ahead on two related issues: Social Security reform and undocumented worker legalization.

The single best way to reduce the amount of entries into the Earnings Suspense File -- and remove the need for immigrant identity theft -- would be to provide a path to legal status for undocumented workers.

On the other hand, removing items from that file would actually increase future liabilities for Social Security, since more wage earners would have a claim on future Social Security payments, adding a bit of fuel for those who warn about Social Security deficits looming in the future.

As things stand, payments made by workers that land in the Earnings Suspense File -- for 2002, Social Security taxes paid on wages of $56 billion -- represent essentially free money to the system, since they come with no future payout liabilities.

In the meantime, neither the Social Security Administration nor the IRS has any public plans to attempt to notify consumers who might be sharing their identity with an undocumented worker -- or 30.

Telling the number's rightful holder that someone else is using it might create more panic then necessary, some Social Security investigators said -- and there's not a lot of good advice the agency could offer, anyway. There's little a victim could do at that point. Uncovering just who is the rightful owner of the Social Security number -- and who is the imposter -- could also pose a challenge. So would finding correct contact information for victims.

Betsy Broder, the attorney in charge of the Federal Trade Commission's efforts to combat identity theft, said more government coordination is surely needed, but she sympathized with the challenge

facing the IRS and SSA.

"Of course consumers are always better off if they know how their information is being misused. But having said that, it's really complex with federal agencies," she said. "There are restrictions under the Privacy Act. You can't release to one person another person's information. And the agencies are often not in a position to know with any certainty who was the right person and who was the imposter, leading to possible problems with unauthorized disclosure of information."

The credit bureaus cite much the same concerns, indicating they simply couldn't sell Social Security number-search tools to any consumer who wants them. Even data aggregators like ChoicePoint don't sell such a product to consumers.

Millet thinks there's another motivation for agencies to not deal with the problem. Everyone except the consumer is profiting from the situation, she said. Notifying every consumer whose number is being misused by someone else would be disruptive to the American workforce, and would force government agencies to face the sticky undocumented worker problem.

"If there was no issue, the government would issue work visas to all of them," she said. "But if we gave them all their own Social Security numbers, they'd be able to compete for real wages. That's why no one is dealing with this."

Bob Sullivan is author of Your Evil Twin: Behind the Identity Theft Epidemic.

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The Washington Times

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HEADLINE: Illegals at power plant prompt call for legislation

BYLINE: By Stephen Dinan, THE WASHINGTON TIMES

BODY:

Illegal aliens using false **Social Security** numbers were able to enter and work as contract painters at a power plant in Florida, including work near one **nuclear** reactor.

Officials at Progress Energy, which runs the Crystal River Energy Complex in Citrus County, say they followed federal regulations and that the contractor should have better vetted its employees.

Now a congresswoman is calling for hearings on how the lapse could have happened and calling for the Senate to pass a bill cracking down on illegal aliens' ability to obtain government identification.

"We certainly don't want to have one illegal alien at a **nuclear** power plant, let alone several," said Rep. Ginny Brown-Waite, Florida Republican. "According to the **Nuclear** Regulatory Commission, Progress Energy did absolutely nothing wrong. They followed the guidelines. But in today's world, the terrorists are just itching to get at us. We need to have more assurances than just pass to the contractor that's been hired."

She said the incident illustrated the need for the Senate to pass the REAL ID act, which passed the House in February and sets national standards for the use of driver's licenses in federal facilities - an incentive for states to make sure applicants are in the country legally.

Progress Energy said at least two workers used identification with false **Social Security** numbers to enter the facility as part of their contract job, and officials at the Florida Gulf Coast Building and Construction Trades Council said the number could be as high as seven.

The individuals worked for Brock Specialty Services, a Texas-based company that was hired to do maintenance at the facility.

Progress Energy spokesman Rick Kimble said the energy company followed the NRC's guidelines. "Point blank, it should not have happened. We obviously should be taking steps in the future to make sure it does not happen," he said. "But we followed the regulations that were required. We also think the contractor had an obligation to do prescreening as well."

Brock officials couldn't be reached for comment.

Mr. Kimble said the NRC requires that persons admitted to power plants have valid government-issued identification, which these workers had. He said the men provided **Social Security** numbers to be matched against law-enforcement databases, but the false numbers the workers gave didn't raise any red flags.

He said the plant has four fossil fuel units and one reactor. He said just one person who submitted a false **Social Security** number had access to the **nuclear** unit, and he, like any other visitor, had a constant escort.

The building and construction union first raised the issue as part of a complaint about contractors at the power company. Michael J. Jeske, secretary-treasurer for the union, said no matter how the workers managed to gain access, something was broken.

"That doesn't give the local community a very good feeling, if you have a situation where undocumented foreigners can get access to a **nuclear** power plant and that doesn't violate anything," he said.

LOAD-DATE: March 14, 2005

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DON KNABE
SUPERVISOR, FOURTH DISTRICT

May 11, 2005

The Honorable John Hostettler
Chairman, Subcommittee on Immigration, Border Security, and Claims
Committee on the Judiciary
United States House of Representatives
B-370B Rayburn House Office Building
Washington, District of Columbia

Dear Mr. Chairman:

We are writing to express our strong support for H.R. 98, the Illegal Immigration Enforcement and Protection Act of 2005, which we understand will be under the consideration of your Committee on May 12th.

H.R. 98 will decrease illegal immigration by denying illegal aliens access to jobs. Its establishment of a secure Social Security card and employment eligibility verification system represents a comprehensive approach to deterring illegal immigration that is lacking in most alternative proposals. We know our strong economy is what lures most illegal immigrants here, and H.R. 98 will make it virtually impossible for anyone here illegally to find work.

Congressman Dreier's legislation, for the first time in any meaningful way, deploys the additional federal officers necessary to enforce employer compliance with existing law. And because some employers apparently have found current penalties inadequate to dissuade them from hiring illegal immigrants, H.R. 98 quadruples financial sanctions and toughens criminal penalties. We believe that H.R. 98 represents a balanced, common-sense, and prescient approach towards solving one of our nation's most vexing challenges.

Thank you for your attention and please do not hesitate to contact us should we be of any assistance.

Sincerely,

DON KNABE
Supervisor, Fourth District
County of Los Angeles

MICHAEL D. ANTONOVICH
Supervisor, Fifth District
County of Los Angeles

DK:MA:lr

Board of Supervisors
County of San Bernardino

BILL POSTMUS
CHAIRMAN
SUPERVISOR, FIRST DISTRICT

May 10, 2005

The Honorable John Hostettler
Chairman, Subcommittee on Immigration, Border Security, and Claims
Committee on the Judiciary
U.S. House of Representatives
B-370B Raybum House Office Building
Washington, District of Columbia

Dear Mr. Chairman:

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Sincerely,

BILL POSTMUS, Chairman
Supervisor, First District

PAUL BIANE, Vice Chairman
Supervisor, Second District

BP/mb

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LETTER FROM THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RANDEL K. JOHNSON
VICE PRESIDENT
LABOR, IMMIGRATION & EMPLOYEE BENEFITS

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WASHINGTON, D.C. 20062
202/463-5448 · 202/463-3194 FAX

May 12, 2005

The Honorable John N. Hostettler
Chairman
Subcommittee on Immigration, Border Security and Claims
House Committee on the Judiciary
370B Rayburn House Office Building
Washington, DC 20515

The Honorable Sheila Jackson Lee
Ranking Member
Subcommittee on Immigration, Border Security and Claims
House Committee on the Judiciary
370B Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hostettler and Ranking Member Jackson Lee:

On behalf of the U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector and region, I would like to thank you for holding a hearing on H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005. I would also like to take the liberty of requesting that this letter be included in the hearing record.

The Chamber has supported voluntary pilot electronic employment verification programs in the past, but does have concerns about their mandatory imposition on employers before demonstrating that they are virtually error free and workable in real life environments. Further, we have serious concerns over the Act's new enforcement provisions that substantially increase the civil penalties applicable to employers and create additional criminal penalties—up to five years in jail—even for an employer who unintentionally and unknowingly fails to follow procedures and guidelines not yet prescribed by the Department of Homeland Security.

The Chamber supports appropriate penalties for those employers who knowingly hire persons unauthorized to work in the United States and understands that stronger penalties are more of a deterrent. However, we disapprove of disproportionate penalties based on an employer's failure to follow guidelines and procedures that many times are unclear.

As for the actual civil penalties proposed, the Chamber believes that these should be commensurate with the violation. While current law recognizes lower fines for first time offenders than those with one or more violations on record, H.R. 98 increases five-fold the highest violation available in current law. This enormous increase takes place at the same time that consideration for the history of the alleged violator is eliminated together with the outline for an appeal's procedure, both clearly detailed in current law.

In the criminal context, H.R. 98 goes beyond the criminal penalties already available in current law and turns what is, in essence, a civil violation—including an innocent failure to follow a not yet promulgated procedure—into a Class D felony. In other words, the penalty for failing to follow procedure or a first time offense of knowingly hiring an individual not authorized to work in the United States would, under H.R. 98, be similar to federal penalties for: assault resulting in substantial bodily injury to a minor and knowingly trafficking in child pornography.

We understand the need for enforcement of our immigration laws, but believe that the debate on employer sanctions needs to take place in the broader context of comprehensive immigration reform. Among the bill's findings, H.R. 98 states that the "economic disparity between the United States and other countries is a prime factor in the desire of foreign nationals to enter the United States illegally." This desire is coupled with a need by employers in the United States for more workers to fill jobs that the native-born population is unwilling or unable to fill. The answer to these issues does not lie in a draconian penalty system on employers, but in a well-reasoned and concerted effort to address border security, the need for an increased number of essential workers, and, of course, enforcement.

We appreciate the opportunity to provide these comments on the topics covered at the hearing, and the U.S. Chamber looks forward to continuing our relationship with the Committee to address these issues.

Sincerely,

Randel K. Johnson
Vice President
Labor, Immigration and Employee Benefits

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